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1	STATE OF NEW YORK	:	COURT OF CLAIMS	:	
2	ANTHONY MILLER,			:	CLAIM NO.
3			CLAIMANT	:	135854
4				:	OAG NO.
5	- VS -			:	21-005334-L1
6				:	
7	THE STATE OF NEW YORK,			:	
			DEFENDANT	:	BENCH TRIAL

Rochester District
Of Court of Claims
Rochester, NY 14614

August 1, 2024

P R E S I D I N G:

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JUSTICE OF THE COURT OF CLAIMS

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DIGITALLY RECORDED PROCEEDING

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5	AARON HINDS	59	105	---	---
6	JAMAL CLARK	113	126	---	---
7	NICOLE MILLER	127	139	---	---
8	ANTHONY MILLER	143	245	---	---
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1 THE CLERK: Today is August 1, 2024. We have
2 Miller versus State of New York, claim number 135854.
3 Honorable J. Scott Odorisi presiding. Test mic.

4 THE COURT: This is set for a bench trial today.
5 Are the parties ready to proceed?

6 MR. SHIELDS: Yes, sir.

7 MS. CHRISTIE: Yes, Your Honor.

8 THE COURT: Is there anything you want to talk
9 about before we get started?

10 MR. SHIELDS: Yes, Your Honor. We would just
11 request that -- for our client to be able to take notes,
12 that he be able to be unshackled. Just the hands.

13 THE COURT: Let me just have the attorneys
14 approach for a moment.

15 *(A discussion was held at the bench with The Court and*
16 *counsel.)*

17 THE COURT: Welcome. This matter is proceeding
18 today, as I indicated earlier, and you indicated the
19 parties are ready to proceed. Any other issues or
20 comments that you want to talk about before we get
21 started?

22 MR. SHIELDS: We just have one question, Your
23 Honor, since Mr. Thompson and I are unfamiliar with The
24 Court's exhibit system. So, our question is, when we want
25 to display an exhibit for one of the witnesses, is that

1 MR. SHIELDS: The relevance is that Anthony --
2 as stated by the Fourth Department, Anthony was the first
3 young black man he was racially profiled and stopped on
4 that night, and this is something that Mr. Miller, Mr.
5 Cromes, and their friends were constantly dealing with,
6 being racially profiled and stopped by the police in their
7 neighborhood for no reason.

8 THE COURT: I'm going to sustain the objection.

9 EXAMINATION BY MR. SHIELDS:

10 Q So, I want to direct your attention to September
11 25th, 2013. Do you remember that day?

12 A Yes.

13 Q Okay. And you were living on Bradburn at that time?

14 A Yes.

15 Q And you were living with your parents?

16 A Yes.

17 Q Okay. And what happened that day that you can
18 remember it now, almost eleven years later?

19 A I can just remember me and my mother is coming from
20 -- I don't know where we was coming from, but I remember we
21 were coming off Bradburn, and it was some guys in the street in
22 a car. They wouldn't get out the way, so I was, like, telling
23 them to move out the way for my mom. And somebody said
24 something about the car, I said something back. They end up
25 leaving me, and my mom went in the house and I went in the

1 front yard with my front steps to sit down. And I say about
2 twenty, fifteen minutes later, the same guys came back and,
3 long story short, a fight broke out. I ended up getting
4 assaulted and my mom and dad took me to the hospital.

5 Q Okay. Can we just back up? And before the incident
6 earlier that day, what were you doing?

7 A I was with my mom all day. I just know I was with
8 her.

9 Q Okay. And, so, can you take us through the
10 interaction that you had with the guys, again, when you first
11 came back in the car?

12 A You talking when we first pulled on the street,
13 right?

14 Q Correct. The first time that you interacted with --

15 A Yeah, um, pretty much they was in the car, they
16 wouldn't move. It took them about three minutes to move. And
17 we was, like, going back and forth arguing at the car, and my
18 mom was telling me, like, just be quiet, let them go. And they
19 end up leaving, and once I went in the house, I came back
20 outside and sat on the porch. And twenty minutes later they
21 came back, started stuff in front of my house.

22 Q So they saw you and they came back, and they
23 approached you?

24 A Yes.

25 Q And that's when you got assaulted?

1 A Yes. It was words, argument, and then when I got
2 assaulted.

3 Q And were you hit in the head with a gun?

4 A Yes.

5 Q And you said your parents drove you to the hospital?

6 A Yes.

7 Q Do you remember if 9-1-1 was called?

8 A Yes, they definitely called.

9 Q Do you remember who called 9-1-1?

10 A My mother.

11 Q Okay. Do you remember when that 9-1-1 call was made?

12 A Honestly, I can't remember where or what time, when
13 she called, honestly.

14 Q Okay. Is there anything that could help refresh your
15 recollection?

16 A Um, if you had, like, 9-1-1 record calls, I could
17 probably show you.

18 MR. SHIELDS: Okay. Judge, I would like to put
19 up what's been marked as Exhibit 1. Okay. If we could
20 scroll down, I think it's the third page. A little
21 further. Okay, that's good right there.

22 EXAMINATION BY MR. SHIELDS:

23 Q And Mr. Cromes, can you see the document that's been
24 marked as Exhibit 1 for identification on your screen?

25 A Yes.

1 Q Okay. And do you see the numbers along the left side
2 of the screen?

3 A Yes.

4 Q And then above that, do you see the name Loretta
5 Cromes? Is that your mother?

6 A Yes.

7 Q And do you recognize the address 400 Elmwood Avenue?

8 A Yes. That would be the hospital.

9 Q Okay and do you remember what hospital?

10 A Strong.

11 Q Okay. Is that the hospital that you were taken to?

12 A Yes.

13 Q And how about that phone number, do you recognize the
14 phone number?

15 A It looks like the Strong Hospital number.

16 Q Okay. And why do you -- how do you know that that's
17 the Strong Hospital number?

18 A 'Cause I think I remember -- nobody's cell phones was
19 working in the hospital. I know the cell phones don't work in
20 the hospital. You get no service. So, I'm pretty sure my
21 mother called, you know, the police that day -- that night when
22 I was in the hospital.

23 Q Using a phone from the hospital?

24 A Yes.

25 Q Okay. And below that, do you see an entry at 1634?

1 Do you see that on the left-hand side of the screen?

2 A Yes.

3 Q And then can you read the text to the right of that
4 entry?

5 MS. CHRISTIE: Excuse me, Mr. Cromes. Judge, I
6 just object. He asked if it would refresh his
7 recollection, but he's having him read from it and it's
8 not in evidence, and I object to it being in evidence.

9 THE COURT: All right. If you could refresh
10 your client -- or the witness's recollection, and then
11 we'll take it down.

12 MR. SHIELDS: Okay.

13 EXAMINATION BY MR. SHIELDS:

14 Q And, sir, does looking at this document refresh your
15 recollection of the time and where you were when your mother
16 called the police?

17 A Yes.

18 Q Okay.

19 THE COURT: You can take it down now.

20 MR. SHIELDS: Okay.

21 EXAMINATION BY MR. SHIELDS:

22 Q And, so, just to be clear, can you tell us when your
23 mother called the police?

24 A I believe it was around -- I don't remember a time.
25 I think -- guessing, I would say like around 7, maybe 6.

1 Q Okay. It would have been the time that was displayed
2 on that document?

3 A Yes.

4 MR. SHIELDS: Could we just put that back up for
5 one second? Okay.

6 EXAMINATION BY MR. SHIELDS:

7 Q So, that would have been 1634, is that right? In
8 looking at the document?

9 A Yes.

10 Q So that would be 4:34 p.m., military time?

11 A I believe so. I can't really remember the time,
12 honestly.

13 Q All right. And do you remember what your mother told
14 the 9-1-1 dispatcher?

15 MS. CHRISTIE: Objection; hearsay.

16 THE COURT: Sustained.

17 EXAMINATION BY MR. SHIELDS:

18 Q And if you can recall, did the document displayed as
19 Exhibit 1, did that entry accurately reflect the information of
20 what happened to you in the assault?

21 A Yes.

22 Q All right. Do you remember arriving at the hospital?

23 A Yes.

24 Q And do you remember about what time you arrived at
25 the hospital?

1 A I really can't remember, honestly. Guessing, I would
2 say 3 something.

3 Q Okay. And is there -- and what did they do for you
4 at the hospital?

5 A I remember them giving me staples in my head.

6 Q Okay. Anything else?

7 A That was pretty much about it.

8 Q Do you remember how long you were at the hospital
9 for?

10 A A couple hours.

11 Q Do you remember what time you left the hospital?

12 A I believe, like, around 8 --8 something, or maybe 9;
13 8:30 or 9.

14 Q Was it light or dark outside when you left the
15 hospital?

16 A It was dark.

17 Q While you were at the hospital, did police officers
18 come to the hospital?

19 A Yes.

20 Q Do you remember the names of the officers who arrived
21 at the hospital?

22 A I believe it was Prinzi, Hoss (phonetic).

23 MS. CHRISTIE: I'm sorry, I didn't hear that.

24 THE WITNESS: Prinzi and Hoss.

25 EXAMINATION BY MR. SHIELDS:

1 Q Prinzi and Hogg?

2 A Prinzi and Hogg. I'm sorry.

3 Q How long after you arrived at the hospital did the
4 police arrive?

5 A I say they arrived maybe 30 minutes. Took them about
6 30 to 20 minutes to get there.

7 Q And did you speak with the officers at the hospital?

8 A Yes.

9 Q What's the sum and substance of your conversation
10 with the officers?

11 MS. CHRISTIE: Objection; hearsay.

12 THE COURT: What's the basis?

13 MR. SHIELDS: Hearsay? I mean -- it goes to why
14 the officers later went to Bradburn Street, so it's
15 relevant. And I don't believe that it's hearsay. It's a
16 conversation that Mr. Cromes had with the officers. How
17 can that be hearsay?

18 MS. CHRISTIE: Unless they had premonitions,
19 they wouldn't know, when they were at the hospital with
20 Mr. Cromes, that some event was going to happen later
21 which would cause them to return to the area of Bradburn
22 Street. So, I don't know how that conversation could
23 explain why they did what they did later.

24 THE COURT: Can you repeat the question? Do you
25 recall what the specifics question was?

1 MR. SHIELDS: The question was, can you describe
2 the sum and substance of your conversation with the
3 officers.

4 THE COURT: What's the purpose of that, the
5 purpose of that question?

6 MR. SHIELDS: The purpose of the question is
7 they accused Mr. Cromes of lying to them, and then later
8 when the officers detained Anthony, when they first
9 stopped him, they said, what happened over here earlier
10 with Brooklyn. So the basis is later they were still
11 trying to investigate what happened with Brooklyn because
12 they thought he was lying to them at the hospital.

13 THE COURT: All right. I'll overrule the
14 objection.

15 EXAMINATION BY MR. SHIELDS:

16 Q So, Mr. Cromes, can you please describe the sum and
17 substance of your conversation with the officers at the
18 hospital?

19 A Yes. I pretty much remember them asking me what
20 happened. I told them what happened. He asked me do I know
21 these guys. I told him I don't know who these guys is, I never
22 seen 'em a day in my life. And I just remember them being
23 aggressive and just being negative, telling me if I find out
24 you're lying, we going to have an F-ing problem. I just
25 remember -- I remember he kept telling me that.

1 Q Do you remember which officer that was?

2 A I really don't remember, honestly.

3 MS. CHRISTIE: I'm sorry I didn't hear that, Mr.
4 Cromes.

5 THE WITNESS: I don't remember that, honestly.

6 EXAMINATION BY MR. SHIELDS:

7 Q Was it one or both of the officers that were speaking
8 to you at the hospital?

9 A It was one.

10 Q Okay. Okay. Now, when did you first learn that
11 Anthony had been arrested?

12 A My friend, Aaron, told me once I left the hospital.
13 I went home and I went across the street to talk to Aaron and,
14 um, he pretty much told me that the police came up Bradburn,
15 put Anthony in the back seat, asked him questions and they
16 searched my friend Aaron's house. He told me they didn't find
17 nothing, and he pretty much told me they took Anthony into
18 custody, you know, that night.

19 Q When's the next time you spoke with Anthony?

20 A Maybe a month or two later while he was in jail.
21 'Cause he was in jail for a while.

22 Q And did Anthony eventually get released from jail?

23 A Yes.

24 Q And did you see him after he was released from jail?

25 A Yes.

1 police?

2 A No.

3 Q Have you ever been harassed by the police?

4 MS. CHRISTIE: Objection.

5 THE COURT: Sustained.

6 EXAMINATION BY MR. SHIELDS:

7 Q On September 23rd -- I'm sorry, on September 25th,
8 2013, you had an interaction with the police, correct?

9 A Yeah.

10 Q Prior to that day, had you ever had any interactions
11 with those same police officers?

12 A No.

13 Q So I want to direct your attention to September 25th,
14 2013. On that day did Anthony Miller come to your house?

15 A Yes, it's on --

16 THE COURT: Can you speak up, sir?

17 THE WITNESS: September 25th?

18 EXAMINATION BY MR. SHIELDS:

19 Q September 25th, 2013.

20 A Yeah.

21 Q Do you remember approximately what time Anthony
22 Miller arrived at your house on that day?

23 A Around 6:20--6--6--between 6 and 6:30 in the evening.

24 Q Okay. Before coming to your house on September 25th,
25 2013, did Anthony Miller call you?

1 A Yes.

2 Q Do you remember what time that call was?

3 A Around 3, 3:15.

4 Q Did you pick up that call?

5 A No.

6 Q Do you know what phone Anthony used to make that
7 call?

8 A No.

9 Q Did you later call Anthony back?

10 A Yes.

11 Q Did you speak with anyone when you called Anthony
12 back?

13 A His brother.

14 MS. CHRISTIE: I'm sorry, I didn't hear that.

15 THE WITNESS: His brother.

16 MS. CHRISTIE: Okay.

17 EXAMINATION BY MR. SHIELDS:

18 Q And what's his brother's name?

19 A Jamal.

20 Q Do you remember what -- do you remember anything
21 about that conversation?

22 MS. CHRISTIE: Objection. Well, withdrawn.

23 THE COURT: You can answer.

24 THE WITNESS: Um, he said --

25 MS. CHRISTIE: Objection to the hearsay.

1 THE WITNESS: Anthony left the house.

2 THE COURT: One second, sir. So the question
3 was, do you remember anything from that conversation. Yes
4 or no, and then we'll get to the next question.

5 THE WITNESS: Yes.

6 EXAMINATION BY MR. SHIELDS:

7 Q And what do you remember about that conversation?

8 A His brother said he --

9 MS. CHRISTIE: Objection to the hearsay.

10 THE WITNESS: His brother wasn't home.

11 THE COURT: Mr. -- all right, Mr. Hinds, you
12 can't talk about what someone told you. So, I'll sustain
13 the objection. You can ask it a different way.

14 MR. SHIELDS: Okay.

15 EXAMINATION BY MR. SHIELDS:

16 Q Did you say anything to Jamal?

17 A Yes.

18 Q What did you say to Jamal?

19 A Jamal asked me -- I asked Jamal if Anthony was there
20 and he left the house.

21 Q So Anthony wasn't there when you called back?

22 A No.

23 Q And do you remember what time you called Anthony
24 back?

25 A No.

1 A Gray hoodie, sweatpants. Like, sandals and white
2 socks.

3 Q And then what happened after they searched you?

4 A They put us in the back of the cop car.

5 Q What happened after you were detained in the cop car?

6 A They took us to the corner of Roslyn and Genesee.

7 Q Before they took you to the corner of Roslyn and
8 Genesee, did you have any conversations with the officers?

9 A No.

10 Q What happened when you got over to Roslyn and
11 Genesee?

12 A We in the cop car for a little bit. They basically
13 told us what happened. There was a robbery and they wanted us
14 to -- wanted the witness -- not the witness, but the victim to
15 identify us.

16 Q Okay. Do you remember how long you were in the cop
17 car for before they did the show-up procedure?

18 A How long I was in the cop car before the Roslyn,
19 or --

20 Q That's a good question. Sorry. My question was bad.
21 So, let's break that down. Before you were transported to
22 Genesee Street, how long were you in the cop car on Bradburn?

23 A At least about forty-five minutes.

24 Q Okay. And you didn't have any conversations with the
25 cops during that time?

1 A No.

2 Q Okay. Did they tell you why you were being
3 transported to Genesee Street before you were transported over
4 there?

5 A No.

6 Q Okay. And then what happened after you got to
7 Genesee Street?

8 A They told us about the incident that happened and we
9 were going to go -- victims were going to identify us, or try
10 to see if we was at the scene, or something, we did it -- did
11 the crime.

12 Q Do you remember what officers told you that?

13 A The officers that drove us there, but I don't
14 remember their name.

15 Q Okay. So the officers that drove you there that
16 stopped you over on Bradburn?

17 A Bradburn, yes.

18 Q And how long were you in the car on Genesee Street
19 before the show-up procedure?

20 A Roughly 25 to 30 minutes, about.

21 Q And did you speak with Wengert or any other officers
22 before the show-up procedure?

23 A Supposably Detective Wengert and the other
24 detectives.

25 Q That was before the show-up procedure --

1 A Before --

2 Q -- before they took you out of the car?

3 A Yes.

4 Q And what did they explain to you, if anything?

5 MS. CHRISTIE: Objection to the hearsay.

6 THE COURT: I'll sustain. If you could rephrase
7 the question.

8 EXAMINATION BY MR. SHIELDS:

9 Q After speaking with them, was it your understanding
10 that you were going to do a show-up procedure with the victim?

11 A Yes.

12 Q Okay. And then did that happen?

13 A Yes.

14 Q Okay. And then what happened -- can you describe the
15 show-up procedure? Like what would -- what did they make you
16 do?

17 A Get out the car on Genesee Street, walked to the
18 corner of Roslyn and Genesee, I say, like, roughly twenty feet.
19 Made us spin around, three hundred and sixty degree angle, and
20 walk back toward the cop car.

21 Q And where was the cop car?

22 A On Genesee Street.

23 Q Okay. So you got out, you walked about twenty feet
24 to the corner, spun around and walked back?

25 A Twenty feet to the -- no. On Genesee Street, then

1 Q All right. Did you speak with Anthony before he left
2 the house?

3 A Yes. For a second, I believe.

4 Q Okay. Do you remember anything about that
5 conversation?

6 A Not really.

7 Q Okay.

8 A Might have asked me for something. I can't remember.

9 Q Do you remember anything you said to him?

10 A No.

11 Q After that conversation, did Anthony leave the house?

12 A Yes.

13 Q Do you remember anything Anthony did before he left
14 the house?

15 A No. He was kind of in a rush, so, no.

16 Q Okay. So you remember that he seemed like he was in
17 a rush?

18 A Yes, sir.

19 Q Now, in September 2013 did Anthony have a phone; a
20 cell phone?

21 A Yes.

22 Q Okay. What do you remember about that phone, if
23 anything?

24 A Like a WiFi phone. Like one of those phones you
25 could call people on WiFi and text people on WiFi.

1 Q So do you mean that it didn't have, like, a cell
2 phone plan with a provider?

3 A Right.

4 Q Okay. So if you wanted to contact Anthony, you could
5 call or text him on that phone, but only if he was connected to
6 WiFi?

7 A Correct.

8 Q How about at home, did you have a landline telephone?

9 A No.

10 Q Okay. So if somebody wanted to call your family,
11 like how would they do that?

12 A Probably call my mom phone.

13 Q When you say, "call your mom's phone," do you mean
14 your mother's cell phone?

15 A Yes.

16 Q After Anthony left the house, do you remember him
17 receiving a telephone call?

18 A Yes.

19 Q Okay. And what do you remember about that call?

20 MS. CHRISTIE: Objection; hearsay.

21 THE COURT: Overruled.

22 EXAMINATION BY MR. SHIELDS:

23 Q So you can answer the question.

24 A Oh, I'm sorry. It was his friend calling, asking to
25 speak to him. I told him he already had left the house.

1 router. So it would tend to drop calls sometimes.

2 Q So, "unreliable" means it would drop calls --

3 A Yes.

4 Q -- from the WiFi network?

5 A Yes.

6 Q And was it common for you to call your friend using
7 your mom's phone?

8 A Yes.

9 Q So when you would call your friends with your mom's
10 phone, they would know it was you that was calling?

11 A Yes.

12 Q What was your mother's cell phone number?

13 A 585-969-8114.

14 Q And does she have the same number today?

15 A Yes.

16 Q All right. I want to direct your attention to
17 September 25th, 2013. You were arrested that day on Bradburn
18 Street shortly after 8 p.m., is that right?

19 A Yes.

20 Q Can you tell us what you were doing that day before
21 the arrest?

22 A That day, specifically, kind of a typical morning. I
23 woke up, put my little sisters on the bus. But I also had a
24 job interview that morning, as well. So, like I said, woke up,
25 put them on a bus, went to my job interview, walked back home,

1 spoke with my father for a little bit, did some more job
2 applications until my little sisters got out of school. So I
3 got 'em back from the bus, took 'em back home, and I was
4 playing a game and I got a phone call from Armeko Austin
5 telling me that Brooklyn, you know, was assaulted and in the
6 hospital.

7 Q When you said you were playing a game when you got
8 that call --

9 A Yes.

10 Q -- what do you mean? What kind of game?

11 A I was playing Call of Duty, I believe. On
12 PlayStation 4 at the time.

13 Q What time would you get your sisters off the bus?

14 A Around 4 or 5-ish.

15 Q And how long were you playing Call of Duty before you
16 got a call from Armeko Austin?

17 A I can't recall exactly, but probably like an hour or
18 so, probably.

19 Q Do you know what time you got the call from Armeko?

20 A It had to be a little after six, I believe. A little
21 after six.

22 Q And how did he call you?

23 A He called me on my textPlus number.

24 Q Okay. Let me back up to earlier that day. Can you
25 tell me about the job interview that you had?

1 A Yes, it was at a plastic company, a molding company
2 off of St. Paul.

3 Q Okay. And you said that you walked there?

4 A Yes.

5 Q And how far away from your home was the location on
6 St. Paul?

7 A I can't tell you in miles, but probably took me
8 thirty -- thirty minutes. Thirty at the most to get there.

9 Q And you walked there and back?

10 A Yes.

11 Q What did you wear to the interview?

12 A I had a button-down shirt, some khakis, a vest, and I
13 wore my Timberland boots.

14 Q Do you remember what, factually, you talked about
15 with Armeko when he called you?

16 A Yeah. He just told me that Brooklyn -- he got jumped
17 in front of his home and he was currently in the hospital. But
18 he didn't really know too much after that.

19 Q Did you ask Armeko for a ride?

20 A No.

21 Q Why not?

22 A 'Cause he was at work and he didn't have a vehicle at
23 the time.

24 Q Okay. Who else was home when you got that call?

25 A My mother, my brother, and my two little sisters was

1 home.

2 Q What did you do after Armeko called you?

3 A I believe I tried to call -- I tried to call Aaron
4 and he didn't pick up, I don't believe, and I tried to call my
5 friend, Shaquan Williams, but he couldn't give me a ride
6 because I believe he said his mother had the vehicle at the
7 time.

8 Q Okay. Do you know what time you called Aaron?

9 A I believe it was 6:26.

10 Q Okay. And how do you know it was 6:26?

11 A Just from my -- you know, me researching my case and,
12 you know, getting all these documents. I remember it.

13 Q So you read -- there's a document that said the phone
14 call was made at 6:26 p.m.?

15 A Yes, the phone records.

16 Q Do you remember which phone records those were?

17 A T-Mobile records. Aaron phone records.

18 MR. SHIELDS: Judge, could I just put up Exhibit
19 14? Never mind. I'm sorry.

20 THE COURT: Thank you.

21 EXAMINATION BY MR. SHIELDS:

22 Q And how did you call Shaquan Williams and Aaron
23 Hinds?

24 A Off my mother phone.

25 Q What did you do after you called Aaron Hinds?

1 A Yeah, after nobody picked up, I recall I asked my
2 brother if I could borrow a pair of his sweatpants. He said
3 no, so I threw on my -- you know, my Red Bull sweatpants, my
4 red hoodie. Got my MP3 player and raced out the door.

5 Q Do you know what time you left the house?

6 A Very soon after the phone call, after I tried
7 calling. So...

8 Q Okay. Like, can you estimate how many minutes
9 afterwards?

10 A No more than three. Three, four minutes.

11 Q How do you know it was no more than three or four
12 minutes?

13 A Personal recollection and also the phone records that
14 show that.

15 Q Okay. What in the phone records show that you were
16 gone within three to four minutes?

17 A 'Cause I know Aaron -- he called back, but I was
18 gone. I already left my house.

19 Q Do you know what time Aaron called back?

20 A I believe at 6:38.

21 Q Okay. So by the time Aaron called back, you were
22 gone?

23 A Yes.

24 Q Did you say anything to anyone else in the house
25 before you left?

1 A No. I don't believe so, no.

2 Q And what were wearing when you left the house?

3 A Red hoodie, my Red Bull Adidas sweatpants, tan
4 Timberlands.

5 Q What else did you bring with you?

6 A My phone and MP3 player.

7 Q And the MP3 player is to listen to music, is that
8 right?

9 A Yeah, as I walk.

10 Q Do you remember what you listened to on the walk?

11 A Probably whatever was popular at the time. Drake.
12 Something like that.

13 Q Hip hop music?

14 A Yeah.

15 Q Do you remember the route that you took from 607 Birr
16 Street to Bradburn?

17 A Not directly, just generally the direction. That's
18 it.

19 Q Can you generally describe how you would have gotten
20 there?

21 A Well, where I was at Dewey Avenue, I just know, you
22 know, the west side of the city, just go right towards, you
23 know, Lyell and just remain in that same direction. Only have
24 to probably turn maybe twice to get to where I was going, so...

25 Q How long did it take you to get from your home to

1 Bradburn Street?

2 A Probably no more than a hour, ten minutes; fifteen
3 minutes.

4 Q How do you know how long it took to get there?

5 A Because when I arrived I use Aaron phone.

6 Q Okay. So, do you remember what time you used Aaron's
7 phone after you arrived?

8 A I believe it was at -- it was at 7:38. I believe I
9 used it a few times, so I believe the first call was at 7:38
10 when I used it.

11 Q Okay. Do you remember what time the second and third
12 calls were?

13 A I believe 7:41 and probably 7:42.

14 Q So sometime before 7:38 you arrived at Aaron's,
15 house?

16 A Yes.

17 Q All right. Let's back up for a second. What's the
18 first thing you did when you got to Bradburn Street.

19 A First thing? Oh, yeah, the first thing I did, I
20 turned my phone on and placed it on James and Jarvis steps for
21 to connect to the WiFi, and I walked across the street to knock
22 on Aaron door.

23 Q During the walk from Birr Street over to Bradburn
24 Street, did you use your phone at all?

25 A No.

1 Q Okay. It was off the whole time?

2 A Yeah.

3 Q You got over there, you say you turned it on, you put
4 it on their steps or something?

5 A Yes, James and Jarvis house.

6 Q Then what did you do after that?

7 A I walked directly across the street to Aaron house,
8 knocked on the door, waited for him to come outside.

9 Q Okay. What happened after you knocked on Aaron's
10 door?

11 A He came outside shortly after that and we spoke for a
12 little while.

13 Q Where did you speak?

14 A On the porch.

15 Q What did you speak about?

16 A The situation with Brooklyn Cromes.

17 Q And what about the situation did you talk about?

18 A What happened, who possibly done it, and what
19 hospital he was at, I believe.

20 Q Did you know what hospital he was at?

21 A Not at the time, no.

22 Q Were you able to ever find that out before you were
23 arrested?

24 A No.

25 Q Did you go inside of Aaron's house?

1 A No.

2 Q Why not?

3 A His parents were strict. They didn't -- you know,
4 they barely like people being on the porch. So, go inside his
5 house was out the question at that time.

6 Q How long did you speak on his porch for?

7 A No more than four or five minutes. Not long at all.

8 Q And what happened next?

9 A Walked across the street to get my phone. Then I
10 attempted to call my cousin, I believe, off my phone with the
11 WiFi. We did talk. We spoke for a little bit. Aaron, he met
12 me and I used his phone, as well.

13 Q What's your cousin's name?

14 A Mario.

15 Q And who did you call using Aaron's phone?

16 A I call Brooklyn. I call Shaquan Williams, and I
17 believe I tried to call Brooklyn again, because he didn't pick
18 up the first time.

19 Q And those are the calls that you gave the times for
20 earlier?

21 A Yes.

22 Q Okay. What were those times again?

23 A I believe it was 7:38, 7:41 and 7:42.

24 Q Did you ever knock on the door at 22 Bradburn?

25 A Never. No.

1 Q How long after you crossed the street was it before
2 Aaron joined you?

3 A No more than a minute.

4 Q When you made those calls to Brooklyn, Shaquan and
5 then Brooklyn, did any of them pick up?

6 A No.

7 Q What happened after you made those three phone calls?

8 A Seem like very shortly after that, that's when the
9 police arrive.

10 Q Okay. Did you speak with anyone else on your phone
11 before the police arrived?

12 A Mario. Yeah, I spoke to Mario, I believe.

13 Q Your cousin?

14 A Yeah.

15 Q Why did you call Mario?

16 A 'Cause when I speaking to Aaron, I believe from
17 somebody else they heard that he might know the individuals
18 that was involved that assaulted Brooklyn.

19 Q Between the time that you made the last call from
20 Aaron's phone at 7:42 p.m. -- between that time and when the
21 police stopped you, were you in front of 22 Bradburn Street?

22 A Yes.

23 Q Okay. Did you do anything else, try to make calls
24 and talk to Aaron?

25 A Nothing else. We stood there the whole time.

1 Q You never left and went anywhere else?

2 A No.

3 Q Did Mario know the guys?

4 A No.

5 Q And what happened after you made that call to Mario?

6 A Very shortly after that the RPD approached us.

7 Q When RPD approached you, were you sweaty or breathing
8 heavy?

9 A No.

10 Q You hadn't just run anywhere?

11 A No.

12 Q You'd just been standing in front of 22 Bradburn?

13 A Yes.

14 Q Tell us about what happened when the police stopped
15 you?

16 A Well, the first car, you know, they pulled up. I
17 believe it was Officer Hogg. He jumped out immediately, pat-
18 frisked Aaron, told us to show us our hands, and in the midst
19 of that, he asked us where was the guns at and what happened to
20 Brooklyn earlier.

21 Q Do you know why he was asking about what happened
22 with Brooklyn earlier?

23 A Do I know why?

24 MS. CHRISTIE: Objection. I'll withdraw.

25 THE COURT: You may answer.

1 THE WITNESS: No.

2 EXAMINATION BY MR. SHIELDS:

3 Q What did you say, if anything?

4 A I told him I didn't know.

5 Q Why did you say you don't know?

6 A Because I didn't really have no answer at the time to
7 give him, to be honest.

8 Q Were you wearing the same clothes when you were
9 stopped as when you had left your house?

10 A Yes.

11 Q What happened next after Hogg stopped you guys and
12 pat-frisked Aaron?

13 A Another officer arrived. I believe his name was
14 Officer Watson. He arrived, did the same thing with me. Took
15 my phone, MP3 player, put me in the back of his car.

16 Q And what happened after they put you in the back of
17 the cars?

18 A We sat there for quite a while. I remember I asked
19 him what was going on, and he said, you know, a robbery took
20 place. But he said we seen, you know, a pretty significant --

21 MS. CHRISTIE: Objection; hearsay.

22 THE COURT: Sustained.

23 MR. SHIELDS: So, we just can't talk about what
24 they said.

25 EXAMINATION BY MR. SHIELDS:

1 Q How -- were you and Aaron put in separate cars?

2 A Yes.

3 Q And how long were you in cars on Bradburn Street
4 before you were taken anywhere else?

5 A Probably forty minutes. Close to a hour.

6 Q Where did you go after -- where did -- or were you
7 taken somewhere?

8 A Yes.

9 Q After that hour or so?

10 A Yes.

11 Q Where were you taken?

12 A I believe we was taken Westside and Genesee Street,
13 at the corner.

14 Q Before you were taken there, did you know why you
15 were being taken there?

16 A Yes.

17 Q Why were you being taken there?

18 A For a possible show-up identification.

19 Q Okay. And what happened when you arrived at Genesee
20 Street before the show-up?

21 A I remember sitting in back of the car and
22 Investigator Wengert, he approached, opened the door, looked me
23 up and down and closed the door. Left.

24 Q You didn't have any conversation with him?

25 A No.

1 Q And then what happened next?

2 A Shortly after that they took us to Roslyn and Genesee
3 Street.

4 Q Okay. So first you were taken to Genesee and
5 Westside Terrace?

6 A Yes. Yes.

7 Q How far is that from Genesee and Roslyn?

8 A I believe two blocks.

9 Q So they drove over about two more blocks?

10 A Yes.

11 Q Okay. Then what happened once you arrived at Roslyn
12 and Genesee?

13 A I was told they was about to do a show-up
14 identification.

15 Q Did they explain what that meant before they did it?

16 A No. I don't -- they gave me instructions before,
17 right when we stepped out. But at the time they said a show-up
18 identification. I never heard of it or knew what it was, so he
19 just say he want to take part in a show-up.

20 Q Did you know why they were making you take part in a
21 show-up?

22 A Not at that time, no. Not really.

23 Q Can you tell us about what happened with the show-up?

24 A They took me out the car, you know, gave me some
25 directions. You know, told me to do a 360 once I got to the

1 house, and then they walked me back to the car.

2 Q Did they do that with Aaron, also?

3 A Yes, from what I seen.

4 Q And who went first?

5 A Aaron went first.

6 Q And did they do the same thing, same procedure you
7 described with Aaron?

8 A Yes.

9 Q And could you see Aaron's show-up?

10 A Yes.

11 Q What happened after the show-up?

12 A After the show-up, I spoke to Officer Watson. I was
13 told I wasn't identified.

14 MS. CHRISTIE: Objection to the hearsay.

15 THE COURT: Your response to that?

16 MR. SHIELDS: I mean, I think it goes to the
17 heart of his case, so I think it's relevant.

18 THE COURT: I'm going to sustain the objection.

19 EXAMINATION BY MR. SHIELDS:

20 Q Now, can you tell me, do you have any idea what time
21 it was when the show-up took place?

22 A Closer to 9:00, I believe.

23 Q So it was dark outside?

24 A Yes.

25 Q Can you describe the lighting conditions in the area

1 where the show-up was conducted?

2 A It was kind of dark. Dimly lit. It wasn't too
3 light.

4 Q Do you remember seeing, for example, any street
5 lights?

6 A Yeah, it was street lights, but it's hard to explain.
7 They wasn't -- it wasn't well lit. It was still dark.

8 Q Do you remember the location of the street lights?

9 A Not exactly, no.

10 Q After the show-up, did you learn whether you were
11 identified or not?

12 A I was told I wasn't. You know, but still was put in
13 cuffs and taken to PSB, so...

14 Q So initially you were told you weren't identified?

15 A Yes.

16 Q And was that -- was that immediately after the
17 show-up?

18 A Yes, I think so.

19 Q Where were you when that happened?

20 A I believe I was getting back into the police car.
21 They was putting me back inside.

22 Q How long did you sit in the police car after the
23 show-up before you were taken anywhere else?

24 A Probably another forty minutes.

25 Q Okay. And what happened while -- and did anything

1 happen while you were sitting in the police car before you were
2 taken somewhere else?

3 A I frequently, you know, banged on the window seeking
4 a answer as to why was I still being detained when I was told I
5 wasn't identified. So, that's it.

6 Q Okay. And did you ever ask to, like, be taken home
7 or anything?

8 A They asked me if that's where I wanted to go after
9 they initially -- I was told I wasn't identified.

10 MS. CHRISTIE: Objection to the hearsay.

11 THE COURT: I'll sustain.

12 EXAMINATION BY MR. SHIELDS:

13 Q And so what happened -- what happened after -- after
14 that?

15 A I was told Wengert -- I was taken to PSB after that.

16 Q Where did you go when you were taken to PSB?

17 A To the interview room.

18 Q What happened when you got to the interview?

19 A I feel like I sat there for probably about a hour and
20 then Investigator Wengert showed up.

21 Q You sat there for a while first, and then Wengert
22 showed up?

23 A Yes.

24 Q Okay. And what happened after Wengert showed up?

25 A He came in and he, you know, said he --

1 MS. CHRISTIE: Objection.

2 THE WITNESS: We spoke.

3 THE COURT: I'll sustain the objection.

4 MR. SHIELDS: Judge, I think that our client
5 should be able to talk about what Wengert said to him
6 since Wengert passed away and is unavailable to be
7 cross-examined or asked questions about the substance of
8 his conversation. This was the heart of Anthony's case.

9 THE COURT: Well, are you offering what was said
10 for the truth?

11 MR. SHIELDS: Not -- no, Your Honor, because
12 we're -- it goes to, largely, Wengert's credibility when
13 he stopped him and the reason for stopping him and
14 arresting him.

15 THE COURT: All right. What I'm going to do,
16 it's an appropriate time for a short ten-minute recess
17 anyway. I'll reserve and I'll come back with that.

18 All right, we'll take a ten-minute recess.

19 *(The Court recessed the proceedings at 3:29 p.m.; resumed at*
20 *3:41 p.m.)*

21 THE COURT: Before we left there was an
22 objection to what Officer Wengert was saying in the
23 interrogation room at the PSB. The Court is going to
24 sustain the objection. The fact that Officer Wengert is
25 now dead makes it even a little bit more difficult and

1 more problematic to get that in. So you can proceed.

2 MR. SHIELDS: Thank you, Your Honor.

3 EXAMINATION BY MR. SHIELDS:

4 Q Do you remember anything that you said to
5 Investigator Wengert during the time when he had you in the
6 interrogation room after you were brought to PSB?

7 A I told him the reason why I was over on Bradburn. I
8 told him about how the phone could exclude me, you know, from
9 the crime. And I also told him to check the city cameras
10 'cause I'm quite sure I was on the camera due to the fact I
11 walked, you know, the distance I walked.

12 Q Did he check your phone?

13 A No.

14 Q Did he check the city cameras?

15 A No.

16 Q Did you tell him anything else?

17 A The only thing I could think of, stuff that, you
18 know, would clear me of the crime at the time.

19 Q Did you know when you were in the interrogation room
20 what you were being accused of?

21 A Yes. He told me, yes.

22 Q So you knew that you were being accused of having
23 committed an armed robbery?

24 A Yes.

25 Q Did you know that Aaron was allegedly involved in the

1 armed robbery, as well?

2 A No.

3 Q Do you know if the victim identified Aaron?

4 A No.

5 Q The victim didn't or you don't know?

6 A I don't know.

7 Q You didn't --

8 A I didn't know at that time, yeah.

9 Q Did you waive your *Miranda* rights and agree to talk
10 to him?

11 A Yes.

12 Q And why'd you do that?

13 A I had nothing to hide.

14 Q Did Wengert believe what you told him?

15 MS. CHRISTIE: I'm sorry, could you repeat it?

16 MR. SHIELDS: Did he believe -- did Wengert
17 believe what you told him.

18 MS. CHRISTIE: Objection; state of mind.

19 THE COURT: Sustained.

20 EXAMINATION BY MR. SHIELDS:

21 Q What happened after you explained to Wengert the
22 reasons that you were on Bradburn Street?

23 A I forgot what led to it, but basically an argument
24 ensued, curse words was exchanged, and the interview was ended.

25 Q Did you say anything to him to end the interview?

1 A I told him I see him at trial.

2 Q Do you remember any conversation about the clothes
3 you were wearing?

4 A Oh, yes. He referenced to how they seemed too big.

5 THE COURT: All right. Sustained.

6 EXAMINATION BY MR. SHIELDS:

7 Q Did you tell Wengert anything about the clothes that
8 you were wearing?

9 A Yes.

10 Q What did you tell him about the clothes that you were
11 wearing?

12 A That I had the top half of the sweat suit at my
13 house.

14 Q Meaning that those were your clothes and not someone
15 else's clothes?

16 A Yes.

17 Q Had you been accused of wearing someone else's
18 clothes?

19 A Yes.

20 Q Did you tell Wengert the route that you took to walk
21 over?

22 A Yes.

23 Q And then you told him to check the city cameras?

24 A Yes.

25 Q But he didn't do that?

1 A No.

2 Q Did you notice anything odd about Wengert before the
3 interview ended?

4 A Yes. Just as far as communication, body language.
5 You know, and his face didn't seem right. He seemed kind of
6 odd and off to me.

7 Q Can you tell me more about how he seemed odd and off?

8 A He seemed to be under the influence of something.

9 Q You mean like under the influence of drugs?

10 A Yes.

11 Q And what makes you think that he was under the
12 influence of drugs?

13 A Due to my experience with dealing with people who use
14 drugs?

15 Q Okay. As we sit here today, do you think that he was
16 on drugs at the time he was interrogating you?

17 A Yes.

18 MS. CHRISTIE: Objection.

19 THE COURT: Basis?

20 MS. CHRISTIE: Foundation.

21 THE COURT: I'll overrule.

22 EXAMINATION BY MR. SHIELDS:

23 Q So you can answer.

24 A Yes.

25 Q Okay. And what makes you -- as we sit here today,

1 what makes you think that he was on drugs during the
2 interrogation? Anything else other than you already talked
3 about?

4 A I was informed that he died of a drug overdose.

5 MS. CHRISTIE: Objection.

6 THE COURT: Sustained.

7 EXAMINATION BY MR. SHIELDS:

8 Q Any other physical characteristics during the
9 interview that would have indicated to you that maybe he was --

10 A Glossy eyes, repeating his -- you know, repeating his
11 self over and over, and not in the way as he's trying to catch
12 me in a lie or reiterate his self, but it seemed like he
13 honestly was forgetting he asked the question, you know,
14 previously. So, just his whole body language, eye contact.
15 And I dealt with him on numerous occasions before, so I was
16 familiar with him.

17 Q So he was acting differently during the night of the
18 interview than he was when you had interacted with him on
19 previous occasions?

20 A Yes.

21 Q What happened after the interview ended?

22 A After the interview ended, I was booked in the county
23 jail.

24 Q What happened when you got to the jail?

25 A They processed me. I made a few calls. That was

1 Q And have you ever been qualified as an expert in a
2 civil case in New York?

3 A I don't believe so.

4 Q And have you been qualified as an expert in the -- in
5 the Court of Claims in New York?

6 A I don't believe so.

7 Q In the New York criminal court, what was the
8 specialty on which you were qualified as an expert, if you
9 remember?

10 A I'm always presented as an expert in eyewitness
11 memory and eyewitness identification.

12 MS. CHRISTIE: Thank you, Doctor. Judge, I
13 defer to you.

14 THE COURT: The Court will qualify Dr. Goodsell
15 as an expert in the two areas you mentioned.

16 MR. SHIELDS: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MR. SHIELDS:

18 Q Doctor Goodsell, can you describe, what is your role
19 in a trial, either a criminal case or a case like this where
20 you're hired as an expert in the areas of eyewitness memory and
21 identification?

22 A In every case I've dealt with, I view my role as an
23 educator. So I'm here to talk about what I know about
24 eyewitness memory and identification issues. There's a whole
25 body of research that shows that memory doesn't work like the

1 average person thinks.

2 There's the -- when I'm teaching about it in class, I get
3 the video camera analogy. Most people have that video camera
4 analogy that we experience something, record it in, and play it
5 back later. Unfortunately, that's not how memory works, and so
6 I'm often in court to describe how the differences between what
7 people think memory works and how it actually works.

8 Q And can you describe some of your research
9 experiments that relate to eyewitness memory and
10 identification?

11 A Certainly. So as I just mentioned, we use the
12 scientific method, like any other field, to test a testable
13 hypothesis. And, so, a typical experiment in my lab would look
14 like bringing in a participant and exposing them to some sort
15 of mock crime, whether it's staged or a video, and then at some
16 later point asking them to make an identification. So within
17 that context, we can look at things like the instructions we
18 give a witness, or how much time goes by, or the composition of
19 a lineup. And, so, all of these variables are things that, as
20 a scientist, I'm interested in.

21 Q Okay. And when you testify in cases involving
22 eyewitness identification issues, is there a common theme or
23 issue that you always talk about?

24 A Certainly. So in any case where there is
25 identification evidence, you want -- I prefer to start talking

1 about memory because an identification is a decision that comes
2 from memory. So understanding how memory works is key before
3 moving on and talking about any other factors that might
4 influence identification.

5 Q Okay. And how does memory work?

6 A So, as I mentioned, it does not work like a video
7 camera, unfortunately. Memory is a complex and constructive
8 process, and we talk about in my class the three phases of
9 memory: Encoding, storage, and retrieval; and within those
10 three stages, which I'm sure we'll get into, we can talk about
11 how memory works at each one of those phases. Would you like
12 me to elaborate on those?

13 Q Yes. That would be great. Thank you.

14 A So the first stage of memory is called encoding, and
15 that refers to how we get information into the system. And,
16 so, there's all sorts of factors that could affect how well
17 we're going to get information into the system. Basically,
18 around how well we're paying attention to something. I give
19 the example of the Bills are on and I'm watching them, and my
20 wife is talking to me. I'm probably not allocating much
21 attention to her because I'm mostly focused on Josh Allen and
22 his amazing throws, or whatever. And, so, what's actually
23 getting encoded into memory, in that example, is limited
24 because I'm not allocating my attention towards my wife, I'm
25 allocating attention towards the game. So, the encoding phase

1 revolves around the amount of attention we can give.

2 Next is storage. And, so, storage refers to the fact that
3 any memory you have has to be held onto in order to regain
4 access to it in the future. And, so, when we talk about
5 storage, we should point out that memory does not get better
6 with time, it gets worse with time. And how we regain access
7 to that memory is key in that last stage, which is the
8 retrieval stage.

9 And, so, any time I ask you to tell me about anything in
10 your past, you're going to have to retrieve something up from
11 memory. As I mentioned earlier, it's a constructive process,
12 so you're going to call up whatever you can from memory,
13 combine that with elements that you might expect to have
14 happened, new information you might have come across, or you
15 might have forgotten some stuff, and your brain is going to
16 combine all that together. And that's going to be your
17 experience of what it is that you're trying to remember from
18 the past.

19 So that's -- in brief, that's the three stages of memory.

20 Q What factors affect the accuracy of encoding?

21 A Okay, so, go back to the first stage of memory;
22 encoding. How well are we getting something in. So, factors
23 such as am I intending to remember this thing later. All
24 right? If I'm allocating attention to something that I want to
25 remember later, that's better than if I'm not realizing that

1 the thing I'm observing or experiencing is something I need to
2 remember later on.

3 Any physical factors: lighting, distance, angle. All of
4 those affect the quality of the image, or the sound, or
5 whatever is trying to get into the system. So if you have a
6 reduced quality of stimuli coming in, you can't remember
7 something better than what you put in. So anything that
8 affects your ability to attend to something. Is there multiple
9 things I'm trying to look at, the amount of time that goes by,
10 the more time I have to study something, obviously the more
11 effort I can use to put that into memory. So any factor that
12 will affect my ability to attend affects the encoding stage.

13 Q What if the instant involved multiple people?

14 A Sure. So, within the context of you have "x" amount
15 of time to observe something, and if there are more than one
16 thing -- if there is more than one thing that I need to
17 remember later, you can't allocate your attention across
18 multiple things at once. So if I'm trying to remember what you
19 look like, Judge, and what you look like, I'm going to have to
20 shift my attention back and forth between the two of you. And
21 if I'm looking at you, I'm not looking at you.

22 Q How about stress?

23 A So, there is a large body of research showing that
24 stress can negatively impact our ability to encode information.
25 There's a really neat study that I like to talk about in my

1 classes involving a researcher that got access to Army POW
2 trainings. These soldiers are out in the field and they're put
3 into a mock POW situation and they're interrogated. And he was
4 -- he was able to gain access to these soldiers and test their
5 ability to recognize their interrogator two days later. And so
6 they had these two conditions: One where the interrogator was
7 being very confrontive and yelling, a high stress situation;
8 and another situation where it was a low stress situation. And
9 the results of that study show that people were less able to
10 accurately identify their interrogator two days later in the
11 high stress condition compared to the low stress condition.
12 So, we know stress can have a negative impact on our ability to
13 encode stuff into memory.

14 Q How about if there were weapons present?

15 A So there's a phenomena called weapons focus in my
16 field. And it's, simply put, that if you're looking at me
17 right now and trying to remember what my face looks like, but I
18 pull out a gun -- and I will just put my finger up here. If
19 you're looking at the gun, you're not looking at my face. And
20 so there's -- there's a large body of research that shows that
21 people allocate their attention towards a weapon if a weapon is
22 brought out. And again, as I mentioned earlier, if you're
23 looking at something aside from the face of the person you're
24 trying to remember later, you're not encoding that information,
25 you're looking at the gun. And so that's known as weapon

1 focus.

2 Q Thank you. Can you explain in more detail the
3 storage phase of the brain?

4 A So storage is simply the fact that we have to
5 maintain that information that we encoded into memory over
6 time. And, so, what I tell my students to think about in the
7 storage phase is two aspects. One is that memory is not fixed,
8 it can change. And two, is that memory tends to fade with
9 time. And, so, the longer you go from encoding something in to
10 recalling it later, the more opportunity there is for that
11 memory to change, specifically, in that last stage, which is
12 the retrieval sustain.

13 Q Okay. And what factors affect the accuracy of stored
14 memories?

15 A So, it's mostly the passage of time which provides
16 the opportunity for memory to change, and then that change is
17 something we would describe that happens in the retrieval
18 phase, which is the last phase.

19 Q Okay. And can you tell us more about the retrieval
20 phase?

21 A Certainly. So, again, any time you call up some
22 memory, what you're going to call up is some combination of
23 things you allocated your attention to and encoded into memory,
24 along with expectations, assumptions, and/or new information
25 you might have come across over time.

1 I always tell my students, you know, we are cognitive
2 misers, which is just a fancy way of saying, like, why should
3 our brains work harder than it needs to. We need to work
4 efficiently. If we spend lots of time thinking about every
5 single aspect of everything in our environment, we would become
6 overwhelmed. We don't have the cognitive resources for that.

7 So that's where that analogy of the video camera really
8 breaks down, because a video camera records an event, puts it
9 onto a tape or a hard drive, or something like that, and then
10 accesses it directly later. Our brains don't work that way.
11 We encode fragments of our experiences and then combine it with
12 expectations, assumptions, knowledge of how the world works.

13 And, so, if that's what's going on, each time you ask me
14 about something, there's an opportunity for what I'm going to
15 tell you to change because I might have come across new
16 information. I might have forgotten something. I might have
17 told a story about said memory, and then that experience can
18 then be encoded in the memory again.

19 That's one aspect that really blows the mind of my
20 students. If I say -- if I ask you right now to tell me about
21 the first time you drove a car, or whatever it is, you're going
22 to tell me some story. And the act of telling me that story is
23 now a new memory that you can encode into memory and rely on in
24 the future if you're asked about driving a car for the first
25 time, for example.

1 And, so, that's what I mean by every time you recall a
2 memory you have the opportunity to change it in some way.

3 Q Thank you. Can you give us a real-world example of
4 how some of these factors affect memory?

5 A Sure. Sure. So, if you were sitting in my cognition
6 class right now, I would say something like, let's pretend
7 you're trying to remember a birthday party from when you were a
8 kid. Your tenth birthday party, or something like that. And
9 you think back and you can see a cake and all these red
10 balloons. And you can see all your friends there, and you can
11 see some of the toys that you really wanted to get.

12 And, so, let's say when you were ten you walked into the
13 birthday party. Well, you didn't need to allocate a ton of
14 attention to the balloons, or the cake, or how to sing happy
15 birthday, because you knew all those things. But you probably
16 really paid attention to those presents because they were
17 really important to you. So you allocated a lot of attention
18 to it.

19 And so fast forward. Let's say you had a conversation
20 with a friend about that birthday party and they -- they're
21 saying oh, yeah, we had so much fun at that birthday party and,
22 you know, we popped all those blue balloons at the party. And
23 our friend Jeff was there. And, so, today you're telling me
24 about popping blue balloons and your friend Jeff. And now
25 let's say I open up a photo album and show you that there

1 weren't any balloons there and your friend, Jeff, wasn't there.
2 And, so, how could something like that happen? Well, again,
3 having a conversation with your friend and then suggesting the
4 color of the balloons, or if there was balloons, you can
5 incorporate that into your memory. Maybe you recalled your
6 friend, Jeff, there because you think back and, well, Jeff was
7 my best friend when I was young. He certainly must have been
8 at my party. Your brain will just -- will fill that
9 information in. And, so, those assumptions that our brain
10 makes, again, these aren't necessarily conscious decisions.
11 You're not thinking Jeff had to be there, therefore, I'm
12 putting it in my memory. Your brain is just going to stuff
13 that together. And, so, I basically use this as an example to
14 say, yeah, you're going to remember those presents. You're
15 probably going to describe them well because maybe you paid
16 attention to it. Maybe you're going to remember a friend that
17 wasn't there because they were a friend, and I just made that
18 assumption. Maybe you make an incorrect assumption about the
19 balloons because your friend suggested that. But that's
20 basically how memory works. We stitch everything together.
21 It's called a constructive process.

22 Q And are you familiar with the fallibility of
23 eyewitness memories in criminal cases?

24 A I am.

25 Q What do we know about whether there are faulty

1 eyewitness identifications?

2 A So, the statistics I would give if you were in my
3 psychology and law class is you can look at the innocence
4 project who's -- it's an organization that looks to exonerate
5 individuals claiming innocence where there is incontrovertible
6 DNA evidence. And if you look at just those cases, I believe
7 there's approximately 350 exonerations, and in roughly 70
8 percent of them, faulty eyewitness memory or ID played a role
9 in that wrongful conviction. And so here are cases where we
10 know -- we know what happens because we had the DNA to go back
11 and see that an error was made.

12 Q If the police conduct a show-up, what procedural
13 safeguards should be employed?

14 A So the American Psychology of Law Society recently
15 published a white paper outlining best practices for
16 identification procedures. They specifically point out that --

17 MS. CHRISTIE: I'm just going to object, Judge,
18 to the procedures of the police. I realize he's here for
19 identification issues, but the procedures for the police
20 are not relevant in an 8-b case.

21 THE COURT: Response?

22 MR. SHIELDS: The response is that here the only
23 evidence whatsoever connecting Mr. Miller to the crime was
24 the show-up identification where he was identified,
25 allegedly, by the victim. So it's relevant here.

1 THE COURT: All right I'm going to overrule and
2 allow the doctor to give some testimony. Give you some
3 leeway.

4 EXAMINATION BY MR. SHIELDS:

5 Q I'm sorry, Doctor. I think that you were describing
6 the procedural safeguards from the white paper?

7 A Certainly. So, that white paper specifically
8 mentions show-ups and how show-ups should be avoided because
9 there's a large body of research showing that show-ups are
10 inferior to a lineup. And when I say lineup, I mean either a
11 physical lineup or a photo array. They are -- I'll use that
12 word, I mean either of them. And if you want me to clarify one
13 or the other, just stop me. But lineups offer an advantage
14 over show-ups because in a lineup you can have known innocent
15 fillers, and in a show-up you only have the suspect. So if you
16 have a witness who is inclined to choose, for any reason,
17 they're always going to choose the suspect, as opposed in a
18 lineup. Let's say I have zero memory and I choose, for
19 whatever reason, well, there's a five out of six -- if there
20 are six people in the lineup, there's a five out of six chance
21 that I'm going to pick a known innocent filler and demonstrate
22 that I'm probably just highly unlikely to choose. The paper
23 goes on to point out that if a show-up is conducted, then all
24 of the applicable safeguards that you could use in a lineup
25 should be used in a show-up. So specifically, everything to

1 reduce the potential for biased cues.

2 So, what I mean by that is the instruction given to the
3 witness can bias him or her to choose or not to choose. So
4 there's a large body of research showing you can influence a
5 witness to choose by saying things even as innocuous as take
6 your time, or I'm sure you'll do a good job. There's research
7 showing that that changes the pattern of choosing with a
8 witness. Any cues to suggest that choosing should be happening
9 in a show-up: getting the suspect out of the police car,
10 having them in handcuffs, having them stand next to a police
11 car, having them stand with a police officer, these all have
12 the potential to influence the witness to choose. Because
13 again, the witness could assume well, the police have picked
14 this person up for a reason. That's why they're in handcuffs.
15 That's why they're here. Contrast that with a lineup where you
16 can present photos in an unbiased way, not suggesting -- not
17 suggesting where the suspect is or even that there is a
18 suspect.

19 So, number one, reduce the potential cues for bias.
20 Number two is the witness should be alerted that the
21 perpetrator may or may not be present in the lineup. And, so,
22 research shows that if you give a witness that instruction, it
23 increases the likelihood that they would say not here if the
24 guilty member was not actually being presented to them.

25 And so, again, a suggestive procedure where a witness

1 feels inclined to choose in a show-up, they're always going to
2 show the suspect because there's only one person. Without that
3 instruction that, you know, the perpetrator may or may not be
4 present here, well, if you have a situation where you're more
5 likely to choose and there's only one choice, again, you're
6 always going to choose the suspect.

7 So, in all cases, regardless whether it's a show-up, a
8 lineup, a witness should be told that the perpetrator may or
9 may not be present. So that's the second one.

10 The third one -- the third recommendation was that all
11 these procedures should be videotaped and, so, no matter what
12 type of identification procedure is conducted, if it's video
13 recorded, then an expert like me or The Court can evaluate what
14 actually happened as opposed to relying on the recollections of
15 people after the fact.

16 And then lastly, the recommendation is to secure a
17 confident statement immediately after the identification. So
18 there's a large body of research that shows if a lineup is
19 conducted in a fair manner; that is, all the members of the
20 photo array or the lineup match the description that the
21 witness gives, if unbiased instructions are given, perpetrator
22 may or may not be present, if it is conducted in a double blind
23 fashion -- which is a fancy term from basic science meaning
24 neither the witness nor the person administering the lineup
25 knows who the suspect is, that's what we call double blind --

1 if you conduct an identification procedure in that manner and
2 the witness makes a decision, if you get an assessment of their
3 confidence immediately after, well, then that assessment is --
4 is related to accuracy. So, if they say they're highly
5 certain, then they're likely to be highly accurate in that
6 situation.

7 Unfortunately, in show-ups and then in situations where
8 the best practices are not followed, that relationship breaks
9 down. So confidence and accuracy is less related. And it's
10 even -- it's even further broken down as you get further away
11 in time. So, for example, there's a phenomenon in my field
12 called the post-identification feedback effect. I actually
13 published a paper on this. It's a pretty cool study where we
14 show people a surveillance footage of somebody walking by, and
15 then we tell our participants this man goes on to shoot a store
16 security guard, and now you're a witness to them. We have the
17 original police lineup. We just want to see if you can pick
18 them out. And so we show -- it's actually true, we show the
19 original police lineup, except we've removed the guilty person
20 from the lineup. And, so, the witness doesn't know this.
21 Everyone chooses because we said hey, he's in here. You got to
22 choose. So everyone chooses, everyone's wrong. That's part of
23 the study. They don't know this. Then they were randomly
24 assigned to get feedback. So if you're in the feedback
25 condition and you choose number three, we tell that person good

1 job, that's the suspect. If you're in the no feedback
2 condition and they choose number three, we don't say anything.
3 Then we asked a bunch of questions related to that experience:
4 How certain were you when you made your decision? How good of
5 a view did you have? How willing would you be to testify
6 against somebody in this situation. And what we found is the
7 people that got the feedback said they were more certain, they
8 were more willing to testify. They had a better view.

9 So what's happening here is when we make confidence
10 judgements, it is a retrospective judgment. We're looking back
11 in time, accumulating the evidence, and saying, well, I must be
12 this sure. The problem in -- the problem with eyewitnesses is
13 if you don't get the confidence right at the moment they make
14 the decision, other factors can influence that. So a witness
15 can see evidence that's being accumulated, they can have
16 discussions with the police, or the prosecutor, or whomever,
17 and they can rely on that to make an assumption about whether
18 they were right or wrong at the time of the ID. And, so, there
19 are -- there are documented cases of witnesses who express low
20 confidence at the time of the identification, but by the time
21 they come out at trial, they are 100 percent certain, or some
22 version of that, and that's known as the post-identification
23 feedback effect.

24 So, fair procedure, confidence assessment right at the
25 time of the identification.

1 Q Based on your reviews of the evidence in this case,
2 were any of those procedural safeguards implemented for the
3 show-up identification conducted with Anthony Miller?

4 A I do not see any of those safeguards implemented.

5 Q All right. Let's talk about other factors that
6 generally lead to errors. Are there any specific factors that
7 lead to errors in eyewitness identifications?

8 A So, in a case where I'm evaluating whether potential
9 errors could have happened, I'm looking at those three stages,
10 whether -- is there anything present that could have affected
11 the encoding, the storage, or the retrieval. Is that what
12 you're asking me about, or are you asking about the procedure,
13 itself?

14 Q Yes. Actually, I think we talked about this already,
15 right? The factors that could affect encoding. That would be
16 things like were they paying close attention, right? We talked
17 about earlier?

18 A Certainly. Anything that could distract your ability
19 to allocate attention. So we talked about if it was dark, if
20 the encounter was brief, if there was a weapon present, if it
21 was stressful, and if it was a cross race situation. I'm not
22 -- actually, now that I say that, I don't know if we discussed
23 cross race.

24 Q Sure. Can you talk about cross race a little bit?

25 A Certainly. I'm sorry. Just like if you were sitting

1 in one of my classes, I might come up with another idea to talk
2 about. So the cross race effect is a well-documented effect in
3 my field showing that identification performance is reduced
4 when the individual trying to be identified is different than
5 -- is a different race, excuse me, than the person who is
6 trying to remember.

7 So, one time I had a Judge on the stand ask me if this was
8 kind of a prejudice type of a situation, and I said, well, you
9 could certainly decide that I'm prejudiced against a particular
10 type of person and consciously choose not to pay attention to
11 them, but that's not what I'm talking about here. The way the
12 research describes this is you grow up around -- typically you
13 grow up around people of your own race. And just like when
14 you're hearing your parents talk for the first time, you're
15 learning the sounds of your language. You're also learning
16 what features are going to help you tell the difference between
17 person A and person B, and so you grow up learning those
18 particular features, again, typically of people of your own
19 race. And therefore, much later on when you're trying to tell
20 the difference between two people of a different race, you
21 might be relying on the wrong features, on the wrong things.
22 And so it's not a prejudice thing, it's just a skills thing.

23 Q And so let's turn to the issues in this case. Have
24 you familiarized yourself with the facts of this case?

25 A I have.

1 Q Did you review the materials listed in Appendix H of
2 your report?

3 A Yeah. You provided me with a Drop Box that had all
4 the materials that are listed in the appendix.

5 Q Okay. And were there certain documents that you
6 focused on that were listed in that appendix?

7 MR. SHIELDS: If we could just put that up? I
8 think that would be Exhibit 63. And the last two pages.
9 EXAMINATION BY MR. SHIELDS:

10 Q Okay. And Doctor, is that an accurate list of the
11 materials that you were provided with?

12 A It is.

13 Q Okay. And so from your review of this evidence, were
14 there any factors present that could have had an adverse impact
15 on the accuracy of the eyewitness identification in this case?

16 A There were.

17 Q Can you describe those, please?

18 A So, we know the crime took place in the evening under
19 less than ideal lighting situation. The encounter was brief.
20 There was a weapon brandished, and the individual was a
21 different race than the victim. All of those factors I just
22 mentioned were -- that could affect the encoding phase were
23 present at the robbery in this case.

24 Q Okay. Do you remember about what time the crime took
25 place?

1 A I remember it -- I believe it was in the 8:00 hour.
2 I could be wrong. I remember it being after sunset because I
3 had to look up whether it was dark that night.

4 Q Okay.

5 MS. CHRISTIE: Judge, I'm just going to object
6 to his qualifications on that ground. I think we need to
7 know what the weather was so we can know what the cloud
8 conditions were and the lighting conditions that would
9 affect, you know the lighting conditions at any given time
10 of day, depending upon the brightness of the sun and
11 coverage by the clouds.

12 THE COURT: I'll allow you to get into that on
13 your cross. I'll overrule.

14 EXAMINATION BY MR. SHIELDS:

15 Q Based on your review of the evidence, did -- was
16 there any testimony about it being dark outside at the time?

17 A I believe there was testimony in one of the
18 depositions, but I'd have to go back and look. I don't
19 remember.

20 Q Do you remember any testimony about there being
21 street lights on?

22 A I do remember reference to street lights, yes.

23 Q Okay. So it wasn't daylight, right?

24 A Correct.

25 Q Okay. And when you're talking about encoding, can

1 you encode a better quality image with more lighting?

2 A Yes. So any situation, it's -- it's -- I don't view
3 it as my job to say there was enough light or there wasn't
4 enough light to encode something. I view it as these are
5 factors that we know affect your ability to encode. When it is
6 brighter, you have a better image on the retina. Therefore,
7 you can encode something better. And, so, as you saw in my
8 report, I simply pointed out that it was in the evening. Light
9 was reduced relative to it being full sun.

10 Q When you referenced the encounter being rather brief,
11 do you remember the testimony about the length of the
12 encounter?

13 A If memory serves me, somewhere I came across twenty
14 to thirty seconds as being the exchange. I believe I wrote
15 that in my report.

16 Q Okay. And so when -- in your research and in your
17 work, is about a thirty-second time period, is that -- compared
18 to other observations and the ability to encode, how does that
19 compare? How does that length of time compare?

20 A Certainly. So, it would be nice if there was some
21 magic line where we said well, given this much time or more,
22 memory's great. Unfortunately, that's not how it works. I
23 would simply point out that within thirty seconds is not a lot
24 of time to allocate your attention across an individual, and a
25 weapon, and everything else around the scene. Also with the

1 factors of it being stressful, cross race, the weapon. So,
2 again, I'm not -- I can't say that thirty seconds is an exact
3 time that means a particular performance, but I can say
4 relative to forty seconds, fifty second, et cetera, it is
5 worse.

6 Q Okay. Now, when you add all of the factors together,
7 does that have an impact on the ability to encode? For example
8 if it was only a stressful situation that involved a cross
9 racial identification, would that person be able to encode
10 better than a stressful situation with a cross race
11 identification that also involved a gun?

12 A So any -- any additional factor that -- that we know
13 can negatively impact your memory performance or your
14 identification performance could compound if there are these
15 additional factors present, yes.

16 Q How about distance of the observation? How does that
17 affect one's ability to encode?

18 A Yeah, it's a common discussion -- topic of discussion
19 in my class when we talk about distance, and the fact that I
20 think a lot of my student don't realize how little distance you
21 need to be away from something before the quality of the image
22 really drops. When you see estimates of individuals across the
23 street, or ten, or twenty feet away, that's -- that's actually
24 a pretty far distance in terms of being able to encode
25 fine-grain details.

1 Q And how is distance a factor -- well, let me withdraw
2 that. In this case there were two identifications made, right?
3 That you reviewed?

4 A That's correct.

5 Q Okay. What can you say about the alleged bike rider
6 at the scene in terms of distance affecting memory accuracy?

7 A Well, if I'm understanding the situation correctly,
8 this bike rider was across the street from where the victim
9 was. So, that is a fairly large distance to try to encode
10 fine-grain details, especially within the shortened amount of
11 time that we just discussed.

12 Q So you discussed the difference between a show-up and
13 a lineup, briefly, earlier. Can you tell us, are there any
14 factors that make show-up -- let me withdraw that. In your
15 field, are show-up identifications considered inherently
16 suggestive?

17 A Yes, they are.

18 Q Okay. Can you explain that?

19 A Well, as I was alluding to earlier, a show-up
20 contains only one individual. Therefore, the show-up always
21 has the suspect and any choice of the suspect is a positive
22 identification. As I was discussing earlier, in a lineup or a
23 photo array, someone who is simply guessing, for example, would
24 be highly likely to put that choice on one of those known
25 innocent fillers, and therefore, the police would know that

1 that person is probably guessing. In a show-up you don't have
2 that information. There is no protection against someone who
3 is guessing or simply highly inclined to choose. It's
4 suggestive in nature because, again, these -- these are often
5 conducted with the police present, and the police know who the
6 suspect is. And in situations, that could be viewed as
7 suggestive in a way to make me want to choose.

8 Q And can you explain the concept of confirmation bias?

9 A Certainly. So, if you were in my cognitive
10 psychology course, we talk about all sorts of heuristics that
11 we rely on. I mentioned earlier that we're cognitive misers.
12 We've evolved to try to use -- try to use our mental capacity
13 as efficiently as possible. So, again, why spend time over
14 thinking every single element in our environment, every single
15 decision. We need to be quick and efficient with our thinking
16 and our decisionmaking. So, we rely on these heuristics and
17 biases, one of which is the confirmation bias.

18 Confirmation bias says that we tend to favor information
19 that supports our preexisting hypothesis. The example I might
20 give in a class is we've probably all had a friend that was in
21 a relationship with someone that we could clearly see it wasn't
22 a good match. Yet when we talked of that individual about that
23 relationship, all they do is tell you about how great the
24 person is, or some good times that they have had. And, so,
25 they're highlighting what they want to focus on, which in this

1 example they want to be in that relationship and probably
2 ignoring other evidence, like the fact that maybe they argue,
3 or they don't share similar interests, or whatever the example
4 might be. And so, again, confirmation bias is that we seek out
5 information to confirm our preexisting belief, and we downplay
6 or ignore information that goes contrary to that.

7 In fact, in good science we have to be very cognizant of
8 the confirmation bias, because if you're only focusing on
9 information that supports your hypothesis, you might be
10 ignoring information that could potentially falsify it. That's
11 why, in a scientific test, your hypothesis needs to be
12 falsifiable. You need to be able to prove that this thing can
13 be proven wrong, or it's not a true test in a scientific term.

14 Q And how can confirmation bias affect a criminal
15 investigation?

16 A So, confirmation bias in a criminal investigation can
17 come up with anyone involved developing a hypothesis about a
18 suspect and focusing on -- only on information that supports
19 that hypothesis, and downplaying or ignoring information that
20 doesn't support that hypothesis.

21 Q Is there research that supports that?

22 A Yes, forensic confirmation bias.

23 Q And did you see any evidence that confirmation bias
24 could have occurred in this case?

25 A Well, yeah. I certainly can't say whether it was

1 happening, but the potential was there. So, for example, we
2 know that the suspect was apprehended approximately a half a
3 mile away, roughly. I believe it was five minutes after the
4 event occurred, which would have required the individual to
5 have to run a half a mile in unlaced Timberland boots, I
6 believe the description was. And the identification the
7 individual said -- who made the positive ID said that the
8 suspect had changed their clothes. So this is a situation
9 where a half a mile run, disposing of whatever was robbed and
10 the weapon, and changing clothes, and not looking winded. I
11 didn't see any evidence in the report that would have supported
12 the facts of the case. And so, if -- if the hypothesis was
13 that a particular suspect was the guilty person and this
14 evidence was present that didn't go along with that, then that
15 could be an example of this potential confirmation bias.

16 Q How about -- you mentioned the clothing. Is there
17 something called a clothing bias?

18 A So, there are documented cases of wrongful conviction
19 where individuals were identified because they had a particular
20 item of clothing that was described by a witness or a victim.

21 Q Okay. And in this case was the mismatch in the
22 clothing that the victim told 9-1-1 and the clothing that Mr.
23 Miller was found wearing when he was stopped, is that mismatch
24 in the description problematic?

25 A So, if -- clothing is a commonly-provided descriptor

1 and -- and if it is distinctive in the sense that it is
2 something memorable, then you would expect those to match
3 between the description and the identification.

4 Q Can you talk about what are some of the best practice
5 recommendations for conducting eyewitness identifications?

6 MS. CHRISTIE: Objection to the best practices
7 for the police.

8 THE COURT: Response?

9 MR. SHIELDS: This is his field of study, best
10 practices. He'd be the person that would help police
11 departments develop best practices.

12 MS. CHRISTIE: This case isn't against the RPD.
13 The police are not the defendants, so it's just not -- the
14 case law is pretty clear, it's not the actions of the
15 police that are supposed to be addressed in this trial.

16 THE COURT: All right. I'm going to sustain the
17 objection. You can move on.

18 MR. SHIELDS: Okay.

19 EXAMINATION BY MR. SHIELDS:

20 Q How did the procedures in this case deviate from best
21 practices?

22 MS. CHRISTIE: Same objection.

23 THE COURT: I'll sustain the objection.

24 EXAMINATION BY MR. SHIELDS:

25 Q Can you describe the show-up identifications that

1 were conducted in this case?

2 A So my understanding is the individual who was later
3 identified to be on the bicycle across the street was presented
4 first. And then the individual who was identified as the
5 perpetrator of the crime was identified second. My
6 understanding is they were presented from approximately twenty
7 feet away, on the street near the scene of the crime.

8 Q Do you remember what time that occurred?

9 A I don't remember the exact time, but I would -- the
10 lighting conditions would have been similar because it wasn't
11 that far into the future when they conducted the show-up. And,
12 so, in the same -- in the same vain, when I talked about
13 lighting and distances being an issue at encoding, it can also
14 be an issue at identification if you're trying to make an
15 identification of someone from a far distance at night. All
16 those factors are at play, as well.

17 Q How did the order of presentation -- how could that
18 have affected the identification, in this case, of Anthony
19 Miller?

20 A Certainly. So, we've talked about the suggestive
21 nature of show-ups being that it's a single suspect. The
22 police are presenting this person. It's reasonable to assume
23 that, as a victim, or a witness, it's reasonable to assume that
24 the police brought you the right person. And in this
25 situation, the first identification is of the alleged bike

1 rider. And so when I first reviewed that, I said well, that's
2 probably going to increase the likelihood that the next
3 individual presented would also be positively identified
4 because, again, you can link the two in your own mind. So
5 potential for the increased bias was there because of already
6 making a positive ID and then showing another suspect right
7 afterwards.

8 Q Are there any other issues that you identified in
9 terms of the show-up that was conducted in this case that we
10 haven't discussed?

11 A I believe we reviewed -- I didn't see any evidence
12 that a warning of the perpetrator may or may not be present.
13 The problem of it being conducted at a distance at night with
14 the alleged perpetrator being the second identification. I
15 believe -- I'm trying to remember -- I'm trying to remember if
16 that's everything we've covered. I believe that's it.

17 Q Do you remember anything about the investigator who
18 conducted the show-up identification? Was there anything from
19 the evidence that stood out about the investigator, himself?

20 A There was a statement I read where the investigator
21 pointed out that he had had a prior encounter with the
22 individual who was identified. And so I can't -- I certainly
23 can't speak to whether that played a role in confirmation bias,
24 but I would leave that up to The Courts to make their own
25 determination about that.

1 Q So that's a factor that could potentially indicate
2 confirmation bias?

3 A It could play a role, yes.

4 Q And Doctor, based on your review of the evidence and
5 your expertise in the field, what is your expert opinion
6 regarding the reliability of the eyewitness identifications in
7 this case?

8 A Well, as we've discussed, there were several factors
9 that would lead me to question the reliability of the
10 identification in this case.

11 Q Okay. And do you believe that the identification
12 procedures used in this case were flawed?

13 MS. CHRISTIE: Objection; Identification
14 procedures (inaudible.)

15 THE COURT: I'll overrule.

16 EXAMINATION BY MR. SHIELDS:

17 Q You can answer.

18 A Well, I can certainly speak to a large body of
19 research that shows that show-ups are inferior to lineups. And
20 when I use the phrase "inferior," the research shows that the
21 ability to accurately discriminate a guilty from an innocent
22 suspect is higher in lineups than it is in show-ups.

23 Q Okay. And what is your overall conclusion about the
24 identification of Anthony Miller as the perpetrator of the
25 robbery in this case?

1 MS. CHRISTIE: Objection. That's for The Court
2 to decide.

3 THE COURT: I'll sustain.

4 EXAMINATION BY MR. SHIELDS:

5 Q What is your overall conclusion about the reliability
6 of the identification of Anthony Miller as the perpetrator of
7 the robbery in this case?

8 MS. CHRISTIE: Same objection.

9 THE COURT: I'll overrule on that.

10 EXAMINATION BY MR. SHIELDS:

11 Q So you can answer.

12 A Oh. So again, my role is not to say whether anyone
13 is right or wrong, but there were several factors present in
14 this identification that would lead me to question the
15 reliability of the identification.

16 Q And do you hold the opinions you gave here today to a
17 reasonable degree of certainty in the field of psychology?

18 A I do.

19 MR. SHIELDS: Thank you. No further questions.

20 THE WITNESS: You're welcome.

21 THE COURT: Thank you.

22 MS. CHRISTIE: Judge, can we take a five-minute
23 break?

24 THE COURT: All right. We'll take a five-minute
25 recess. We'll come back at -- (inaudible).

1 *(The Court recessed the proceedings at 2:40 p.m.; resumed*
2 *2:50 p.m.)*

3 THE COURT: We'll start with the cross at this
4 point. Doctor, I just want to remind you, you're still
5 under oath.

6 THE WITNESS: Thank you.

7 CROSS-EXAMINATION BY MS. CHRISTIE:

8 Q Good afternoon, Doctor.

9 A Good afternoon.

10 Q So, you indicated in response to questioning by Mr.
11 Shields that you're an experimental psychologist, correct?

12 A That's correct.

13 Q And that means that you're not a clinical
14 psychologist, right?

15 A That's correct, I'm not.

16 Q You don't provide counseling to people?

17 A I do not.

18 Q And because you're not a clinical psychologist, is it
19 fair to say that you're not board certified?

20 A I am not board certified.

21 Q That's because you don't need it because you don't
22 provide counseling?

23 A Correct.

24 Q When you did your analysis, did you assume -- let me
25 rephrase that. Is it fair to say that you did not assume that

1 Mr. Miller was wrongfully identified as the robbery suspect, is
2 that correct?

3 A That is correct.

4 Q And is it fair to say that you did not assume that he
5 -- that Mr. Miller was wrongfully convicted of the robbery?

6 A This case, with any case, I look at just the factors
7 that are relevant to my expertise. So I don't make any
8 assumptions about guilt or innocence.

9 Q And when you testified in response to questioning by
10 Mr. Shields that you conducted experiments, that's what you do
11 as an experimental psychologist, correct?

12 A Correct. Part of my job.

13 Q And when you do those experiments, they are -- when
14 you do experiments surrounding crime scenarios, they're mock
15 crimes, correct?

16 A Correct.

17 Q So you have mock victims?

18 A Yes.

19 Q Right. And mock suspects?

20 A Yes.

21 Q And mock criminal situations?

22 A Correct.

23 Q When you bring people in for those, are they
24 students, are they volunteers, or something else?

25 A In the lab it's typically students. We also run

1 online research where it's -- it could be anyone volunteering.

2 Q And people could be volunteering, and maybe students
3 get credit for it, or do they get paid for it, or something
4 else?

5 A In some cases they're doing it for course credit. In
6 other cases they might be getting paid, yes.

7 Q But you're not doing experiments that deal with real
8 crimes?

9 A We are not conducting real crimes in my lab.

10 Q And the experiments that you're conducting are in a
11 controlled setting, maybe at the university?

12 A That's correct.

13 Q Or somewhere else?

14 A Yes.

15 Q And are you controlling the variables for those
16 experiments?

17 A So, what do you mean by controlling the variables?

18 Q Well, do you determine the nature of the crime and
19 what the person -- what the mock victim witnesses and what the
20 mock suspect does?

21 A Yes.

22 Q Now, you were not at the location, of course, of the
23 robbery on September 25th, 2013?

24 A I was definitely not.

25 Q So you're not a witness in any way to this?

1 A I am not.

2 Q In preparation for your analysis and report, you did
3 not interview Jack Moseley, the victim of the robbery?

4 A I did not.

5 Q And you did not interview Investigator Wengert?

6 A I did not.

7 Q In fact, is it true that you didn't interview any of
8 the Rochester Police Department officers involved with that
9 investigation and arrest?

10 A That is true.

11 Q And is it also true that you never interviewed Mr.
12 Anthony Miller?

13 A That's true.

14 Q You testified in response to questioning by Mr.
15 Shields that some of the factors that can affect memory,
16 particularly in an identification situations. And I believe
17 you said one of the factors is how good of a view the person
18 had?

19 A That's true.

20 Q And one of the factors is did the person making the
21 identification realize at the time of the event that there was
22 a crime occurring?

23 A Yes.

24 Q That's one of the factors?

25 A The intent behind making a memory. So, for example,

1 if I came -- if I came to you and said, you know, what did the
2 cashier at Wegman's look like last week when you were there,
3 you could say something like well, I had no reason to pay
4 attention to that person, so how would I know.

5 Q Right. So if something happens and you say to
6 yourself this is an important event, I need to make note of
7 this. That would be something that would affect the memory,
8 potentially?

9 A Yes.

10 Q So if somebody has a gun to somebody's head, they
11 might -- well, probably realize that a crime is occurring, is
12 that correct?

13 A I would assume so, yes.

14 Q Is it fair to say that stress affects all people
15 differently?

16 A That's fair.

17 Q And you did not interview Mr. Jack Moseley, the
18 victim of the robbery on September 25th, 2013?

19 A I did not.

20 Q And, so, is it fair to say you don't know how the
21 stress of the situation would have affected him specifically?

22 A That's fair to say, yes.

23 Q You indicated in response to questioning by Mr.
24 Shields that -- you mentioned a gun earlier. That the presence
25 of a gun can make it difficult for a person to observe specific

1 parts of the event. Is that true?

2 A That's true.

3 Q Things such as the color of somebody's shirt?

4 A Yes.

5 Q And things such as the material of somebody's pants?

6 A Yes.

7 Q In reviewing this case, Dr. Goodsell, did you review
8 the supporting deposition of Jack Moseley? And I can -- if you
9 don't remember and you need me to, I think I can show it to
10 you. I think it's an exhibit.

11 A I don't remember. There was a lot of stuff for me --

12 Q Let me --

13 MR. SHIELDS: 34.

14 MS. CHRISTIE: Okay. If we could put 34 up on
15 screen? I think it's actually in evidence.

16 MR. SHIELDS: It is.

17 MS. CHRISTIE: Okay. Thank you. Can you scroll
18 down a little bit, Jen? I just want to -- yes, this is
19 the one.

20 EXAMINATION BY MS. CHRISTIE:

21 Q Doctor, if you could just take a moment and review
22 this to yourself and just let me know when you have had a
23 chance to review it?

24 A I've read everything that's on the screen.

25 MS. CHRISTIE: Ms. Purdy, if you could just

1 scroll the screen just so you maybe see -- so you see
2 everything up until the signature, Doctor.

3 THE WITNESS: Okay.

4 EXAMINATION BY MS. CHRISTIE:

5 Q Have you had a chance to review Exhibit 34 which is
6 in evidence?

7 A Yes.

8 Q Had you read that prior to preparing your report?

9 A I believe I have.

10 Q And you indicated in response to questioning by Mr.
11 Shields that you expressed the importance of having the person
12 who's conducting the show-up saying, "The person who committed
13 the crime may or may not be present," correct?

14 A Correct.

15 Q And I believe you indicated in response to
16 questioning by Mr. Shields that that part of the procedure
17 wasn't used here. Do you remember that testimony?

18 A I do.

19 Q Do you see in the deposition, and it was documented,
20 that statement was made?

21 A I do see that he says -- I -- "asked me if I would
22 take a look at two guys that may or may not have been involved
23 in the incident."

24 Q Thank you, Doctor. Doctor Goodsell, were you aware
25 that Mr. Miller was not in handcuffs at the time of the

1 show-up?

2 A Sitting here right now I can't tell you whether he
3 was or wasn't.

4 Q Based upon what you read, do you have any reason to
5 believe that -- I'll strike that. Based upon what you read, is
6 it fair to say that the victim, Jack Moseley, was close to the
7 individual who robbed him at the time that the robber placed a
8 gun to his head?

9 MR. SHIELDS: Objection.

10 THE WITNESS: Proximity in distance?

11 MS. CHRISTIE: Yes, sir.

12 THE COURT: The basis for your objection?

13 MR. SHIELDS: What does she mean by close?

14 THE COURT: All right. Objecting to form. If
15 you could rephrase?

16 MS. CHRISTIE: Sure.

17 EXAMINATION BY MS. CHRISTIE:

18 Q Did you learn information -- did you read information
19 that gave you data regarding the distance between the person
20 who robbed Jack Moseley and Jack Moseley at the time of the
21 incident?

22 A I interpreted it as close in the sense that I believe
23 he said he placed the gun on his head and robbed him. So that
24 would --

25 Q So the person had to be close enough to him to be

1 able to reach to put the gun to his head?

2 A Yes.

3 Q And does that closeness factor increase the
4 likelihood that the identification that victim makes would be
5 accurate?

6 A Relative to an encoding situation with a -- the
7 further distance, yes.

8 Q Understood. And from your review of the materials in
9 this case, I believe you indicated earlier, is it fair to say,
10 that Jack Moseley knew that a crime was going on at the time?

11 A It would be reasonable to assume that.

12 Q And does that factor increase the likelihood of a
13 correct identification by that victim?

14 A It makes the intent to encode greater relative to not
15 knowing that a crime was going on.

16 Q So everything -- everything is relative to other
17 hypothetical scenarios, correct?

18 A Certainly.

19 Q And is it fair to say, based upon everything that you
20 read, that Jack Moseley recognized the need to remember the
21 information at a later date while the crime was occurring?

22 A Well, I certainly can't speak to his mental state or
23 anything beyond the fact that we know he called 9-1-1 and made
24 a report.

25 Q And does that fact make it more likely, compared to

1 other scenarios, that Mr. Moseley would be able to accurately
2 identify the person who robbed him?

3 A Is the question: Is the fact that he called 9-1-1
4 make it more likely that he could accurately identify someone?

5 Q The fact that he knew he needed to remember the
6 information.

7 A In a hypothetical, if you know you need to remember
8 something later, you're more likely to encode it than if you
9 are unaware that you need to remember something later.

10 Q Thank you.

11 A You're welcome.

12 Q Doctor Goodsell, from everything you reviewed in
13 order to prepare your analysis in this case, is it fair to say
14 that the show-up procedure occurred within fifty minutes of the
15 time the robbery occurred? Fifty. Five-zero.

16 A I believe it was within an hour, yes.

17 Q And does the short duration of time between the time
18 the robbery was committed and the time of the show-up increase
19 the likelihood of a correct identification?

20 MR. SHIELDS: Objection. Objection to the form
21 characterizing fifty minutes as a short amount of time.

22 THE COURT: I'll sustain. Rephrase.

23 MS. CHRISTIE: What was that?

24 THE COURT: He objected as to form, as to the
25 characterization of fifty minutes being a short period of

1 time.

2 MS. CHRISTIE: Oh. Okay.

3 EXAMINATION BY MS. CHRISTIE:

4 Q The particular length of time, in this case, between
5 the time of the robbery and the time of the show-up ID, does
6 that increase the likelihood of a correct identification by Mr.
7 Moseley?

8 A Relative to what?

9 Q Relative to something longer?

10 A So we know memory tends to fade with time, so you
11 want to test memory when it's fresh. So in a relative sense,
12 you want less time going by.

13 Q If a crime victim identifies an assailant or a
14 suspect -- a crime victim accuses -- identifies a suspect as
15 having a chin strap beard and the person who committed that
16 crime has a chin strap beard, does that mean the victim
17 properly encoded and properly retrieved the memory?

18 MR. SHIELDS: Objection. There's no evidence
19 that he identified him as having a chin strap beard.
20 That's not what he told 9-1-1.

21 MS. CHRISTIE: It's in the supporting deposition
22 which is in evidence.

23 THE COURT: It is contained --

24 MR. SHIELDS: -- by Wengert.

25 THE COURT: I'm sorry?

1 MR. SHIELDS: The deposition was written by
2 Investigator Wengert.

3 THE COURT: I will allow you to answer the
4 question. Overruled.

5 THE WITNESS: Could you restate it?

6 EXAMINATION BY MS. CHRISTIE:

7 Q I think so. Let me just say -- rather than have it
8 read back, let me just think for a second. If a crime victim
9 identifies a suspect as having a chin strap beard and the
10 person who committed the crime has a chin strap beard, does
11 that mean that the victim properly encoded the memory and
12 properly retrieved the memory?

13 MR. SHIELDS: Objection. Objection; form.

14 THE COURT: I'll overrule.

15 THE WITNESS: It's a complex question, so I'm
16 thinking about it. You would expect a description to
17 match the person being identified, and to the degree that
18 the description matched the person identified, I would
19 want to take that into account. Does that answer what you
20 were asking me?

21 EXAMINATION BY MS. CHRISTIE:

22 Q I think so. Let me ask another -- let me ask another
23 similar question. If a robbery victim identified a suspect as
24 being five-seven and the person who committed the crime was
25 five-six, does that mean that victim properly encoded and

1 retrieved the memory regarding the height?

2 A In this situation you're saying the victim says a
3 person is five-seven and the suspect is five-six. What does
4 that say? It says, well, the suspect matches the description
5 to some degree. I can't say whether that's accurate or not
6 because there are lot of five-six people out there.

7 Q Okay. I guess what I'm asking you -- well, let me
8 ask you this one. If the victim identifies a suspect as having
9 tan Timberland boots and the person who committed the crime of
10 that victim had tan Timberland boots, does that mean the victim
11 properly encoded and retrieved that memory?

12 MR. SHIELDS: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: So, any description given by a
15 victim where a suspect has the feature or qualities that
16 matched the description is -- would be reason to suspect
17 that individual. I can't speak to the accuracy, though.

18 MS. CHRISTIE: Okay. I understand. Doctor, I
19 have no further questions.

20 THE COURT: Thank you. Any redirect?

21 MR. SHIELDS: Thank you.

22 REDIRECT EXAMINATION BY MR. SHIELDS:

23 Q Dr. Goodsell, is it fair to say that the first --
24 well, let me withdraw that. What was the first description
25 provided by the victim in this case of the perpetrator?

1 A It was the 9-1-1 call.

2 Q And that was the closest in time to the event
3 occurring?

4 A That's correct.

5 Q And what was the description provided in the 9-1-1
6 call.

7 MS. CHRISTIE: Objection, assumes facts not in
8 evidence.

9 MR. SHIELDS: What?

10 MS. CHRISTIE: Assumes facts not in evidence.

11 MR. SHIELDS: The 9-1-1 call is in evidence.

12 THE COURT: Overruled.

13 THE WITNESS: It was a description describing, I
14 believe, a black man wearing a hoodie.

15 EXAMINATION BY MR. SHIELDS:

16 Q Do you remember the color of the hoodie?

17 A I believe it was gray.

18 Q And do you remember the sort of pants he was wearing?

19 A I don't at this moment.

20 Q But is it fair to say because it's the closest in
21 time that that would be the most accurate description?

22 A With any case that I look at, I want to look at what
23 assessment of memory do we have nearest the event. So you want
24 to test memory when it's fresh. Just like I've described,
25 memory can change over time. You want to look at the

1 additional -- the initial interview, the initial 9-1-1 call.

2 Those initial statements are the freshest test of memory.

3 Q Okay. And was there any description of a chin strap
4 beard in that initial 9-1-1 call?

5 A I don't believe there was.

6 Q And do you remember when the chin strap beard first
7 came into any of the evidence in this case?

8 A I mean, it was after the 9-1-1 call, after -- I don't
9 recall if it was after the identification or not, but I believe
10 it was. I could be wrong about that.

11 Q Do you remember if it was after Investigator Nolan
12 Wengert spoke with the victim?

13 A I believe it was.

14 Q Does that -- the fact that it was later in time make
15 that a less reliable description?

16 A Well, any opportunity where an individual could come
17 across additional information is a potential for that memory to
18 change. So it's unclear to me where the source of the chin
19 strap beard came from. All I know is that it didn't appear
20 till later, after the 9-1-1 call.

21 Q So it could have possibly been suggested to him?

22 MS. CHRISTIE: Objection; speculation.

23 THE COURT: I'll overrule.

24 THE WITNESS: It's possible.

25 EXAMINATION BY MR. SHIELDS:

1 Q Okay. Just a couple other follow-ups on a few
2 questions from Ms. Christie. Can you explain why you did not
3 interview anybody as part of your analysis of this case?

4 A Excuse me. So I should point out that there is no
5 diagnostic test that I could conduct that would ever show me
6 whether a witness is accurate or inaccurate. There is no
7 assessment that would tell me that the person's memory is a
8 true or a false memory. And so my role is to look at the
9 evidence and identify factors that I know affect eyewitness
10 memory and eyewitness identification. So speaking to anybody
11 involved is never necessary.

12 Q So it's not something you ever do in any case?

13 A It isn't something I've done so far, no.

14 Q Okay. So Ms. Christie -- is Exhibit 34 still on your
15 screen? So Ms. Christie asked you about Exhibit 34. Is it
16 still on the screen? And she asked you whether it included the
17 words, "may or may not," correct? Do you remember that
18 question from her?

19 A I do remember the question, yes.

20 Q And that's a different instruction than the police
21 having told the victim here that the individual being presented
22 may not have been involved in the crime, is that correct?

23 A I simply read back what it says here. "Two guys that
24 may or may not have been involved in the incident," so...

25 Q So would it have been a better, less suggestive

1 instruction if they had said to him instead, we're going to
2 present you two guys who may not have been involved in the
3 crime?

4 MS. CHRISTIE: Objection to the reference of the
5 police procedure.

6 THE COURT: Response?

7 MR. SHIELDS: This is in response to the
8 questions that Ms. Christie asked.

9 THE COURT: I'll overrule.

10 THE WITNESS: Can you restate the question,
11 please?

12 EXAMINATION BY MR. SHIELDS:

13 Q Oh, sure. It would be a different question if the
14 police had said to the victim: We're going to present to you
15 two individuals. They might not have been involved in the
16 crime?

17 A It's reasonable to assume that might have been
18 interpreted differently.

19 Q Okay. Would that have been a less suggestive way to
20 instruct the victim?

21 A I believe the standard instructions, "may or may not
22 be the perpetrator" are standard, so...

23 Q Okay. Now, do you remember reviewing the trial
24 testimony of Jack Moseley?

25 A I did read through it, yes.

1 Q Do you remember him testifying that he was focused on
2 the gun at the time of the robbery?

3 A I believe I referenced that in the report, yes.

4 Q Okay. And when someone's focused on the gun, would
5 that make the identification of their face less accurate?

6 A The amount of time we spend allocating your attention
7 on a gun is time you are not allocating towards remembering
8 features of the face or how it looks. And so yes, it could
9 negatively affect your ability to accurately recall that person
10 later.

11 Q Is identification of someone's facial features later,
12 the recall, is that more difficult than identification of the
13 clothing that somebody was wearing?

14 A Oh, that's an interesting question.

15 Q Give you a research experiment.

16 A Yeah, that's a great question. I'd have to answer
17 you the way I would in a classroom if you were a student.
18 That's a really good question. You should look up -- no. I
19 don't -- I don't know. That's a great question.

20 MR. SHIELDS: Okay. Thank you. I have no
21 further questions for you.

22 MS. CHRISTIE: Nothing further.

23 THE COURT: Okay. You're all set, Doctor.
24 Thank you. All right, your final witness?

25 MR. SHIELDS: Thank you, Your Honor. We call

1 Reynaldo DeGuzman.

2 MS. CHRISTIE: Judge, before we call him, I just
3 kind of -- I wanted to bring an issue to the Court's
4 attention.

5 THE COURT: Sure.

6 MS. CHRISTIE: So, I think The Court reserved --
7 in the motion to -- in the motion in limine regarding the
8 videos, The Court said the videos could come in with
9 proper foundation. But the case cited by The Court was
10 Goldner - Kemper -- versus Kemper Insurance Company in
11 which an expert conducted experiments. Here we don't have
12 any expert who conducted the experiments. It seems to be
13 one that was set up by Mr. Shields, conducted by Mr.
14 Shields, with some person who participated. But there's
15 nothing by the experts. So I would ask that the video --
16 renew my request to preclude the video, and thereby
17 eliminate the need for Mr. DeGuzman to testify.

18 THE COURT: All right. First of all, there's
19 two videos, correct? Which one are you looking to admit?

20 MR. SHIELDS: 82, Your Honor.

21 THE COURT: And your response, for the record,
22 regarding Ms. Christie's renewed motion?

23 MR. SHIELDS: I think that the distinction is
24 irrelevant. And here it's demonstrative evidence that's
25 relevant to The Court's -- to the finder of fact's

1 determination and understanding of issues in this case.

2 So I don't think the distinction is dispositive.

3 The fact that it was an expert had nothing to do
4 with the outcome of that case that she cited.

5 THE COURT: All right. I'm going to reserve,
6 but I'll allow Mr. DeGuzman to testify. Regarding the
7 curriculum vitae of Dr. Goodsell, who just testified, I
8 reserved on that. Any objection to admitting that?

9 MS. CHRISTIE: You qualified him. I have no
10 objection to the CV coming in.

11 THE COURT: All right we'll mark that as
12 received.

13 MR. SHIELDS: Thank you. And Dr. Peterson, as
14 well?

15 MS. CHRISTIE: She was qualified. I have no
16 objection to that either.

17 THE COURT: We'll mark that as received, also.

18 (CLAIMANT'S EXHIBIT 66 WAS RECEIVED IN EVIDENCE; CLAIMANT'S
19 EXHIBIT 64 WAS RECEIVED IN EVIDENCE.)

20 MR. SHIELDS: Thank you, Your Honor.

21 THE COURT: We're ready.

22 COURT DEPUTY: Stand right here and face the
23 clerk and raise your right hand.

24 R E Y N A L D O D e G U Z M A N,

25 Called herein as a witness on behalf of the

1 Claimant, being first duly sworn, testified as follows:

2 THE CLERK: State your name for the record.

3 THE WITNESS: Reynaldo DeGuzman.

4 THE COURT: Can you spell your last name, sir?

5 THE WITNESS: D-E capital G-U-Z-M-A-N.

6 THE COURT: Okay. Thank you. Just make sure
7 you speak into the microphone.

8 THE WITNESS: Okay.

9 THE COURT: All right. Your witness.

10 DIRECT-EXAMINATION BY MR. SHIELDS:

11 Q Good afternoon, Mr. DeGuzman.

12 A Good afternoon.

13 Q And can you just please tell us, what's your
14 occupation?

15 A I'm a filmmaker and a cinematographer here in
16 Rochester.

17 Q And how long have you been engaged in that
18 occupation?

19 A For five years.

20 Q And can you describe your current physical fitness
21 routine?

22 A I try to run fifteen to twenty miles --

23 MS. CHRISTIE: Objection to relevance, Judge.

24 MR. SHIELDS: This goes directly to the
25 relevance of how quickly he was able to run the route in

1 the video.

2 THE COURT: I assume Mr. DeGuzman is the person
3 in the video?

4 MR. SHIELDS: Yes, Your Honor.

5 THE COURT: All right. I'll allow it.

6 EXAMINATION BY MR. SHIELDS:

7 Q So, I'm sorry, can you just describe your current
8 physical fitness routine?

9 A Sure. I run fifteen to twenty miles every week on a
10 trail, and I mainly box four sessions every week, and lift here
11 and there.

12 Q Okay. And do you regularly participate in, like, any
13 races or timed events?

14 A No. No. I don't enjoy working out with people.

15 Q Okay. And can you just explain for The Court how you
16 got involved in this case?

17 A I was contacted by you in order to run a route. I
18 wasn't given much other information other than the clothes I
19 had to wear, which I found quite particular given the heat of
20 the summer. And I agreed to do it and we did it, I believe, in
21 the beginning of summer, in May.

22 Q Okay. And do you remember any specific instructions
23 about how to perform the run?

24 A I was told to run pretty hard. No warmup time. Just
25 given the starting coordinate and given the route. And yeah,

1 we only ran one time.

2 Q Did you receive any compensation for your
3 participation in the run?

4 A I did. I was paid \$200.

5 Q And do you remember the date that you performed the
6 run?

7 A We ran May 3rd. May 3rd of this year.

8 Q And do you remember the beginning and the end, like,
9 the route?

10 A Yes. I think we started on Roslyn, took a right onto
11 Genesee, a right on Sawyer, a left onto Millbank, and we ended
12 up taking a right onto Bradburn. Bradburn Street.

13 Q Okay. And was the run you performed in the video
14 recorded in a single continuous shot, or were there multiple
15 takes?

16 A It was just a single -- single run, thankfully.

17 Q All right. How many times did you run the route
18 before the final video was recorded, if any?

19 A It was just a single take.

20 Q And did you discuss the conditions under which the
21 robbery allegedly took place?

22 A I was given a brief overview.

23 Q Okay. And were you aware of the -- like the time the
24 robbery was -- supposedly occurred?

25 A Yes, I was.

1 Q Okay. And did -- what time of day did the run occur?

2 A It was in the morning, 10 or 11 a.m.

3 Q And how come the run wasn't performed at night?

4 A I simply didn't have the availability.

5 Q And do you remember how long the run took?

6 A You know, I don't. It would probably be helpful and
7 embarrassing to see the video again, but we ran at a pretty
8 quick clip. I believe it was a sub seven minute -- it would
9 have been a sub seven minute mile. So three minutes,
10 something, half mile.

11 MR. SHIELDS: Okay. Judge could we --

12 EXAMINATION BY MR. SHIELDS:

13 Q Would watching the video refresh your recollection of
14 how long the run took?

15 A It would.

16 MR. SHIELDS: Judge, could we play the video
17 that's marked as Exhibit 82 for identification?

18 THE COURT: Yes.

19 EXAMINATION BY MR. SHIELDS:

20 Q And Mr. DeGuzman, do you recognize that video?

21 A I do.

22 Q And was that you depicted conducting the run in the
23 video?

24 A That was me.

25 Q And is this a true and accurate depiction of the run

1 you performed on May 3rd, 2024?

2 A Yes.

3 Q And did the video accurately capture the conditions
4 of your run, including your physical state after the run?

5 A Yes.

6 Q After the run was performed, were you out of breath?

7 A I was.

8 Q Were you out of breath during the run?

9 A No. No, I felt -- I mean it looked like I was
10 struggling a bit more than I remembered, but no, I felt -- I
11 felt all right. It was just towards the end, I think, the
12 melee of changing clothes kind of caught up to me, I think.

13 Q And after the run were you sweating?

14 A A lot, yes.

15 Q And was that depicted in the video?

16 A Yes.

17 Q Could you see the sweat on your brow, on your face?

18 A Yes.

19 Q And could you see yourself breathing heavily in the
20 video?

21 A I could.

22 MS. CHRISTIE: Objection to the leading, and
23 objection to the relevance of what this person experienced
24 running, unless he was the person that committed the
25 robbery.

1 THE COURT: All right. I'll overrule.

2 EXAMINATION BY MR. SHIELDS:

3 Q And what did you do after you arrived in front of 38
4 Bradburn Street -- or 31 Bradburn Street?

5 A I had to switch my hoodie, take off my boots. I took
6 off my jeans, I switched into a pair of tracksuit pants, put
7 the boots back on and then walked over to the other house on
8 Bradburn.

9 Q Just going back to the questions. Did you pay
10 attention to the time in the video that you started to run?

11 A I did.

12 Q What time was that into the video?

13 A I started running about fifty-five seconds in and
14 ended four minutes and nineteen seconds, I think.

15 Q Okay. And so that would be about three and a half
16 minutes, is that right?

17 A Yep. Right under.

18 Q And do you know how long the run was from 19 Roslyn
19 to 31 Bradburn?

20 A It was a half mile.

21 Q Okay. And so there had been about a seven-minute
22 mile pace?

23 A Yep. Just under.

24 Q And then did you pay attention to how long it took
25 you to change clothes?

1 A I did. Struggled with it a bit.

2 Q About how long did it take you to change clothes?

3 A It looked like two minutes.

4 Q Okay. So you got to the car at about 4:19 you said?

5 A Yep.

6 Q And then did you see what time you started to walk
7 across the street?

8 A I didn't pay as good of attention. I was more
9 interested in my time.

10 Q So -- but that was an accurate depiction of how long
11 it took you to change clothes, right?

12 A Absolutely.

13 Q And then -- and then after you changed clothes, what
14 did you do next?

15 A I had to walk across the street over to -- well, put
16 the clothes away, and then I had to walk across the street,
17 obviously, to the other house.

18 Q And when you were conducting the run, like, how hard
19 were you running?

20 MS. CHRISTIE: Objection.

21 THE COURT: I'll overrule.

22 THE WITNESS: I was running about eighty
23 percent, I would say. Definitely not full out, but I was
24 giving a good effort.

25 EXAMINATION BY MR. SHIELDS:

1 Q Okay. And if you had been going full out, do you
2 think you could have run full out between those two locations?

3 A I could have.

4 Q And if you had run full out, how much more quickly do
5 you think you could have arrived?

6 MS. CHRISTIE: Objection; speculation.

7 THE COURT: I'll overrule.

8 THE WITNESS: A bit arrogant, but I think I
9 could have got under three minutes.

10 EXAMINATION BY MR. SHIELDS:

11 Q Okay. If you'd gotten there in under three minutes,
12 would you have been breathing more heavily and sweating more?

13 MS. CHRISTIE: Objection; speculation.

14 THE COURT: Overruled.

15 THE WITNESS: I would have been absolutely
16 heaving. Yeah.

17 EXAMINATION BY MR. SHIELDS:

18 Q And can you tell us what you were wearing during the
19 run?

20 A I was wearing a pair of boots -- Nike boots, some
21 jeans with a belt, and I was wearing a black -- thick black
22 hoodie.

23 Q Was it difficult to run at that pace wearing those
24 things?

25 A It was unpleasant.

1 Q And were your boots laced or unlaced?

2 A They were laced.

3 Q If your boots had been unlaced, do you think you
4 could have done the run as quickly?

5 MS. CHRISTIE: Objection; speculation.

6 THE COURT: Overruled.

7 THE WITNESS: I wouldn't have been able to run
8 as quickly. I still would have been able to run though.

9 EXAMINATION BY MR. SHIELDS:

10 Q And after completing the run, did you take any breaks
11 before changing clothes or proceeding over to 22 Bradburn?

12 A No. No breaks.

13 Q And what clothing did you change into?

14 A I changed into a running blue hoodie. I changed into
15 a pair of tracksuit pants and the same pair of boots.

16 Q And how are you feeling after you arrived over at 22
17 Bradburn Street?

18 A Hot, sweaty, annoyed.

19 Q And how did you first become aware of Anthony
20 Miller's case?

21 A I first became aware of Anthony Miller's case, I
22 would say, a year and a half ago. A good friend and colleague
23 of mine, Rob Bell, who writes for the U.S.A. Today --

24 MS. CHRISTIE: Objection; relevance and hearsay.

25 THE COURT: Response?

1 MR. SHIELDS: Your Honor, this goes to potential
2 bias that we anticipate the State arguing.

3 THE COURT: All right. I'll overrule.

4 THE WITNESS: Robert Bell, a columnist with the
5 U.S.A. today and Democrat and Chronicle approached me
6 about Anthony's, I guess, want to potentially make a
7 documentary about his experiences in life, and it was
8 something I was very, very interested in. But due to
9 client work and other things, I wasn't able to follow up
10 on it. And that was the first time that I learned about
11 his experience.

12 EXAMINATION BY MR. SHIELDS:

13 Q Had you ever spoken with Anthony Miller?

14 A No. Unfortunately I wasn't able to reach out.

15 Q So you never did any work or follow-up on actually
16 making that documentary?

17 A No. This is my first time that I've seen Anthony.

18 Q And did you and I have any discussions about the
19 details of his case before you performed the run?

20 A Briefly. A brief overview. You tried to convince me
21 to do it.

22 Q Do you have any personal interest in the outcome of
23 this case?

24 A I don't.

25 MR. SHIELDS: Your Honor, based on the witness's

1 testimony, I move to admit Exhibit 82 into evidence.

2 MS. CHRISTIE: Same objection that I made
3 earlier today and through the motion.

4 THE COURT: All right. The Court will receive
5 it as demonstrative evidence. We'll mark it as received.

6 MR. SHIELDS: Thank you, Your Honor.

7 (CLAIMANT'S EXHIBIT 82 WAS RECEIVED IN EVIDENCE.)

8 MR. SHIELDS: We have no further questions.

9 THE COURT: All right. Ms. Christie?

10 CROSS-EXAMINATION BY MS. CHRISTIE:

11 Q Good afternoon, Mr. DeGuzman.

12 A Good afternoon.

13 Q My name is Tamara Christie. I just have a couple of
14 questions for you, sir. You said in response to questioning by
15 Mr. Shields that I think your route was Roslyn Street, to
16 Genesee, to Sawyer, to Millbank, to Bradburn. Is that right?

17 A Yes.

18 Q Who gave you that route? Who told you to run that
19 route?

20 A Google Maps and Elliot.

21 Q Mr. Shields told you to run that?

22 A Yes. Yes.

23 Q Did you create -- did you run any routes between 19
24 Roslyn and 22 Bradburn that included cutting through yards?

25 A Other than avoiding the U-Haul and specifically the

1 brown Buick, just a couple lawns I had to run over.

2 Q Did you run any routes -- did you -- so you indicated
3 in response to questioning by Mr. Shields that you didn't run
4 any other routes, other than the one that was depicted in the
5 video, correct?

6 A Yes. Just that one.

7 Q So you didn't do that run cutting through people's
8 backyards and jumping over fences, or anything like that?

9 A No, I didn't.

10 Q And did you run any routes that involved -- that
11 included you traveling at least partway by way of a motor
12 vehicle?

13 A No.

14 Q And did you run any routes or create any videos
15 between 19 Roslyn and Bradburn that included your traveling at
16 least partway by bicycle?

17 A No.

18 Q And you did not create any videos or run any routes
19 of all possible routes between 19 Roslyn and 22 Bradburn, is
20 that correct?

21 MR. SHIELDS: Objection to form. I was
22 confused.

23 THE COURT: Overruled.

24 THE WITNESS: Do you mind repeating that?

25 EXAMINATION BY MS. CHRISTIE:

1 Q Sure. Is it fair to say that you did not run any --
2 run -- let me ask you two questions. Is it fair to say that
3 you did not run all possible routes between 19 Roslyn and 22
4 Bradburn?

5 A Yes, I didn't.

6 Q And of course, it's fair to say you didn't create any
7 videos of your runs between all possible -- of all possible
8 routes between 19 Roslyn and 22 Bradburn?

9 A Yes.

10 MS. CHRISTIE: Thank you, sir. I have no
11 further questions.

12 THE WITNESS: Thank you.

13 MR. SHIELDS: No redirect, Your Honor.

14 THE COURT: Mr. DeGuzman you are all set. You
15 can step down. Thank you.

16 THE WITNESS: Thank you.

17 MS. CHRISTIE: Thank you.

18 THE COURT: Mr. Shields, you rest?

19 MR. SHIELDS: Yes, Your Honor.

20 THE COURT: All right.

21 MS. CHRISTIE: Judge, I would just like to make
22 a 4401 motion, directed verdict, that the -- failure to
23 make a prima facie case of innocence in this case.

24 THE COURT: All right. I'll reserve on that.
25 In terms of closing comments?